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Letter dated 23 January 2005 from the Permanent Representative of the Sudan to the United Nations addressed to the President of the Security Council

On instructions from my Government, I wish to transmit to you a summary of the report of the Commission of Inquiry to investigate alleged human rights violations committed by armed groups in the Darfur states established by the President of the Republic on 8 May 2004. I should be grateful if you would have this letter and its annex circulated to the members of the Council.

(*Signed*) Elfatih **Erwa**
Permanent Representative

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Annex to the letter dated 23 January 2005 from the Permanent Representative of the Sudan to the United Nations addressed to the President of the Security Council

In the name of God, the Merciful, the Compassionate

Summary of the report

Commission of Inquiry to investigate alleged human rights violations committed by armed groups in the Darfur states

Khartoum, January 2005

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In the name of God, the Merciful, the Compassionate

Commission of Inquiry to investigate alleged human rights violations committed by armed groups in the Darfur states

Summary of the report

1. By decision No. 97 of 2004 the President of the Republic established a Commission of Inquiry to investigate alleged human rights violations committed by armed groups in the Darfur states. The decision specified the composition, terms of reference and powers of the Commission to enable it to conduct its work in accordance with the Commissions of Inquiry Act of 1954.

2. The Commission began its work by defining its legal basis and agreeing on the procedure for carrying out its mandate.

3. The Commission held 65 meetings, heard testimony from 288 persons and visited the three Darfur states several times, going to 30 areas to establish the course of events, and taking evidence from witnesses under oath. It also met the local authorities, those of the states, the native administrations, the organizations of civil society and local and foreign relief organizations working in the Darfur states.

4. The Commission requested and received from a number of ministries, from the states (*wilayat*), and from organs of central Government and the states, all the relevant files and documents relating to its mandate. It also studied the reports prepared by all the missions that had visited the Sudan representing the United Nations, the African Union, the Organization of the Islamic Conference, the Arab League and other organizations. The Commission carefully studied all the successive reports issued by international human rights organizations such as Amnesty International, Human Rights Watch and the International Crisis Group, together with the reports of the Commission on Human Rights in Geneva.

5. The Commission also studied the resolutions of the United States Congress, the European Union and the Security Council and the proceedings of the negotiations between the armed opposition and the Government held in N'Djamena, Abéché and Abuja. The purpose of this was to shed light on the accusations made by one party against the other as well as any other accusations that could be ascertained.

6. The Commission transmitted the decision establishing it and the Commissions of Inquiry Act to the armed opposition abroad and conferred several times with it, both in writing and by telephone, inviting the opposition to meet the Commission at any time and in any place that might be agreed in order to listen to its views, but no meeting took place.

7. To the extent possible, the Commission documented all its proceedings in writing and in sound recordings and photographic records.

8. The geographical and historical setting of Darfur, the fact that it borders on three African States with a frontier strip 1,300 kilometres in length, its demographic structure which includes over 80 tribes, the overlapping of those tribes with neighbouring countries, the environmental and demographic changes that have occurred in the region as a result of drought and desertification, immigration from neighbouring countries, the large-scale proliferation of weapons in recent decades, the emergence of both secret and overt political organizations together with the

resulting administrative changes and the repercussions of political developments on the Darfur region of the Sudan, together with other factors, all had to be taken into account by the Commission as part of the mandate entrusted to it. What is now happening in Darfur is essentially the product of all these factors, together with indiscriminate politicization which, in its turn, has had the effect of internationalizing the problem.

9. According to the 1993 census, the population of Darfur was 4,746,456, although the estimates of the Central Statistical Bureau indicate that the current population of Darfur is approaching 6 million. The surface area of Darfur is 196,404 square miles, or about one fifth of the surface area of the Sudan. It is inhabited by many different tribes of both Arab and African stock but, over the centuries, the tribes have intermingled and become both ethnically and culturally mixed, resulting in the present-day society of Darfur with its unique characteristics. Throughout its history, Darfur has seen numerous migrations from the north, east and west of Africa and groups of Darfur tribes have also migrated to various parts of the Sudan.

10. The diversity of the natural environment and the climate has given rise to diverse economic activities and means of livelihood. Agriculture and stockbreeding remain the two main occupations of the population of Darfur, together with cross-border trade which has developed considerably.

11. Land tenure in Darfur is governed by established customs and traditions whereby the tribes live in defined areas known as "*diyar*" or "*hawakir*". Title to land is connected with the concept and exercise of authority under its various designations (sultan, king, superintendent, "*dimungawi*", "*shartai*" (tribal leader), "*farishah*", "*umda*" (village chief, sheikh) and also with economic activity and the movement of pastoralist tribes in the search for water and pasture.

12. For centuries, the tribes of Darfur lived in relative peace which was disturbed by disputes between pastoralists and farmers over resources. However, in accordance with prevailing customs, such disputes were settled by the native administration and under the auspices of the State. Such customs remained an inseparable feature of the society of Darfur and resulted in an agreed system governing camel tracks and regulating relations between farmers and pastoralists in the utilization of sites for agriculture and stockraising, and also of water resources. There were therefore numerous tribal peace conferences under the auspices of the provincial and central authorities which ended with agreements, the terms of which all parties endeavoured to implement. This was a unique feature of Darfur and became part of its culture which was based on respect by all parties of the rights of the other parties and on convincing the tribes, with their different backgrounds, that there was no alternative to coexistence and that no tribal group could displace another. The Commission counted over 36 armed inter-tribal conflicts during the period from 1932 to 2001, most of which were concerned with disputes over resources, but also including instances of reprisal, plunder and so forth. The Commission notes that most of these controversies occurred between tribes with the same lineage, although some were between tribes of different stock.

13. It is important to bear in mind that the native administration was one of the main factors of stability in the region, playing, as it did, an important role in the settlement of disputes and in regulating relations between tribes and cooperation with the municipal, provincial and federal authorities in that connection, until its dissolution in 1970, without any suitable alternative being found, led to an

administrative and security vacuum. The break-up of the native administration also had the effect of exacerbating the disputes and gave rise to the emergence of acute inter-tribal rivalry and political polarization. The disputes were thus removed from their traditional framework to a regional one and took on national dimensions related to matters in the public arena such as marginalization, the division of authority, wealth and so forth.

14. The decline in the level of economic development in Darfur for a number of reasons mentioned in the report, the deterioration in services, the continuing changes in administrative arrangements and in the incumbents of various executive positions, the halting of development projects such as the West Darfur development project, the savannah project and the ostrich farm project, the delay in the implementation of the western relief road, the prevalence of unemployment, the increase in the numbers of poorly educated people together with the proliferation of weapons and the ease with which they could be acquired, the prevailing instability in Chad, the continuing changes in its ruling regime and the linkage between that and some of the Sudanese tribes — all this led to the emergence of a culture of violence and to some practices alien to the society of Darfur such as armed robbery. The latter became worse in the 1980s and gave rise to the emergence of semi-organized cross-border crime involving the smuggling of stolen livestock to neighbouring States. Renegades from a number of tribes with differing ethnic affiliations, both from the Sudan and abroad, took part in this in semi-organized groups to which the people of Darfur came to refer as the "Janjaweed". Other groups then appeared such as the Tora Bora, the Peshmerga and armed militias. This led some tribes to set up armed groups for self-protection and to form alliances among themselves. In other words, the effect of the above-mentioned factors was to weaken the authority of the State and lower its prestige as compared to earlier times. This prompted the President of the Republic to intervene several times to set up machinery on which he conferred wide-ranging powers, making them responsible for resolving the existing problems and extending the prestige of the State to the three Darfur states.

15. The situation in the country was characterized by troubled security, intraregional conflict and insurgency against the authority of the State. The native administration played a diminishing role, armed robbery became widespread and mutually contradictory administrative decisions were taken in an endeavour to address the prevailing problems without any regard for their immediate or future consequences, particularly their impact on land tenure and its relation to the exercise of authority. In addition, there was civil war in the country and the Sudanese Peoples Liberation Movement in the south was attempting to polarize the people of the outlying states under the slogan of the New Sudan, and to resolve the issue of marginalization. In this climate, the issues were politicized, divorced from their traditional framework and took on regional dimensions, and the conflict became one between various groups on the one hand, and the State on the other. The controversy began with theoretical policy statements and ended in armed confrontation. Following a succession of attacks on police stations in several areas, the martyrdom of some 500 members of the police force and the seizure of their weapons, there was a security vacuum. As a result, the conflicts between the various tribes, for the reasons mentioned above, became more serious while, for different reasons, tribal reprisals and the desire of some tribes to seize the land of others and

to establish entities comprising the dominant tribes all conspired to politicize and internationalize the issue in a manner unprecedented in the history of the Sudan.

16. On 25 April 2003, the armed opposition attacked the city of El Fasher, capital of North Darfur and went on to attack Kuttum on 1 August 2003, Meleit in the same month and then Kulbus, Buram and Tawila. This resulted in hostile action against the armed forces, the killing of more than 70 people, the destruction and burning of five aircraft, the destruction of public installations, particularly the hospitals of Kulbus, Meleit and Buram, and attacks on symbols of public authority, such as the judiciary and offices of the Public Prosecutor, and on some members of the native administration and the murder and burning of numerous citizens and attacks on relief convoys. All this led to the intervention of the armed forces to provide security and protect the population, and also to a feeling of apprehension on the part of a number of tribes concerning possible aggression against them. These events resulted in grave violations of human rights, and brought suffering to the people of Darfur, many of whom migrated to camps. In some cases, there were related instances of highway robbery which resulted in a scarcity of provisions and rising prices, all of which was the beginning of the problem which has now increased in scale and become internationalized.

17. These events, which were reported by the news agencies and satellite television networks, gave rise to considerable legitimate concern on the part of international human rights organizations. Some of these organizations, however, tended to exaggerate and to rely on inaccurate and contradictory information concerning events in Darfur dictated in large part by political considerations. This resulted in concern about the problem on the part of certain States and within the United Nations, and in accusations made against the Sudan of ethnic cleansing, genocide and systematic rape.

18. On the basis of the above, the Commission began its investigation of the facts by listing all of the allegations of violations of human rights or crimes against humanity (see annex III) involving the burning of villages, murder, rape, sexual violence, forcible transfer, internment, torture, abduction, shelling or bombing of civilians, endangering their lives, pillage of private property, genocide, ethnic cleansing and extrajudicial executions. The investigation measures comprised the holding of prolonged hearings with all parties, visits to the places that were alleged to have been the scene of the events leading to the violations, consultation of documents and papers, and the taking of statements under oath from numerous witnesses.

19. After the Commission had evaluated all of the above and discussed it in the light of international human rights law, the provisions of international humanitarian law, the Statute of the International Criminal Court and relevant historical precedents, it concluded as follows:

19.1 Grave violations of human rights had occurred involving the three Darfur states in which all parties to the conflict had participated in varying degrees and these had inflicted human suffering on the people of Darfur as a result of which people had migrated to the capitals of the Darfur states or sought refuge in Chad.

19.2 Despite the gravity of the events in Darfur, they did not constitute genocide because the conditions for genocide were not met. Proof was not provided to the Commission that any of the protected groups, whether ethnic, religious, racial or

national, had suffered bodily or mental harm nor had they been deliberately and with evil intent subjected to conditions of life that were calculated to bring about their destruction, in whole or in part. The events in Darfur were unlike what had occurred in Rwanda, Bosnia or Cambodia where the State had pursued a set of policies leading to the destruction of a protected group.

19.3 It was proved to the Commission that the events in Darfur were the result of the factors mentioned in the report and of the circumstances that have been explained. Proof was also provided that the description of the events as amounting to genocide was based on exaggerated figures relating to killings which, on investigation, were not confirmed (see section 13 of the report).

19.4 It was also proved that the armed forces had bombarded certain areas where elements of the armed opposition were hiding and that the bombardment had killed a number of civilians. The armed forces investigated the matter and compensated the victims in the areas of Habila, Umm Gozin and Tulu. The investigation is still under way with regard to events at Wadd Hajam.

19.5 It was also proved to the Commission that armed opposition groups had committed similar acts, killing unarmed civilians and wounded military personnel in Buram hospital and burning some of them alive.

19.6 It was also proved to the Commission that many murders had been committed by tribes in dispute with one another amid a climate of conflict in areas such as Sania Deleiba and Shattaya.

19.7 The killing of civilians in all the foregoing cases were violations of article 3, common to the Geneva Conventions of 1949 (see section 14 of the report).

19.8 Killings committed under various circumstances by all parties to the armed conflict amount to a violation of article 3 common to the Geneva Conventions of 1949 but do not, in the view of the Commission, amount to genocide because of the absence of elements constituting genocide, particularly the lack of proof that any of the protected groups were targeted and the lack of proof of criminal intent.

19.9 Allegations were made concerning instances of extrajudicial execution by all parties but some of the allegations in this connection were not substantiated to the Commission beyond doubt. Accordingly, the Commission recommended in certain specific cases mentioned in the report that a judicial inquiry should be conducted (see section 16 of the report). This is because any statements made to the Commission are not admissible as evidence before any court in accordance with article 12 of the Commissions of Inquiry Act of 1954, which states: "Statements made during investigations conducted in accordance with this Act shall not constitute admissible evidence before any court, whether civil or criminal".

19.10 With regard to the crimes of rape and sexual violence, which had attracted the attention of the international media, the Commission conducted investigations in all the states of Darfur at different levels and heard witnesses under oath, including rape victims. The women involved were medically examined. The Commission also consulted reports of the judicial commissions which had visited several areas of Darfur, including camps for displaced persons.

19.11 The above proved to the Commission that incidents of rape and sexual violence had been committed in the states of Darfur but it was also proved that such acts had not been committed in such a systematic manner or on such a wide scale as

to constitute crimes against humanity, as had been alleged. It was also proved to the Commission that most of the rape cases had been reported against unidentified people, although investigation had led to the identification of a number of them, including 10 members of the regular forces. The Minister of Justice has lifted their immunity and they are now standing trial. Most of the rape cases were committed by individuals in a climate of instability.

The Commission took note of the legal and linguistic implications of the word "rape" which was generally unknown to the women of Darfur who believed that the word "rape" denoted violence to force a person to commit an act against that person's will, and not specifically rape (see section 17 of the report). Regrettably, a collective rape had been videotaped, part of which had been shown outside the Sudan. It was later discovered that the act had been contrived, some of the participants admitting that they had been persuaded to take part by the promise of payment (compact disc attached).

19.12 Forcible transfer (deportation), as an element in ethnic cleansing, means the displacement by means of coercion or violence of an ethnic group, or a group speaking the same language, or having a particular cultural background from the area in which the group was lawfully present to another area. Throughout history, ethnic cleansing has been associated with the concept of the formation of a nation State and, as such, amounts to a crime against humanity.

19.13 Accordingly, the Commission visited a number of areas in Darfur, which had been alleged to have been the scene of forcible transfer or ethnic cleansing. The Commission interrogated the local people of those areas and ascertained that some Arab tribal groups had attacked the area of Abram, specifically the villages of Murayah and Umm Shawkah, displacing some non-Arab groups and settling in the area. However, as the Commissioner of Kas locality had reported, the authorities had taken steps to rectify the situation and return property to its owners. The actions of certain Arab groups had resulted in the forced displacement of the non-Arab groups. The Commission calls for a judicial investigation to identify the conditions and circumstances that had led to this situation. If the crime of forcible transfer is proved, legal measures should be taken against the attacking groups since the act constitutes a serious precedent which violates prevailing customs and may trigger similar acts that will aggravate the problem.

19.14 The Commission visited a large number of villages that had been burned in the Kulbus, Geneina, Wadi Saleh and Kas localities and found most of them to be uninhabited. The Commission was therefore unable to question the inhabitants. In some of the villages it found forces of police that had recently been deployed in preparation for the voluntary return of the displaced persons. However, the information given by the *shartai* (tribal leader) and *umda* (village chiefs) who accompanied the members of the Commission, together with the available circumstantial evidence, indicated that responsibility for the burning of villages was borne by all parties in the heat of conflict. It was also confirmed that the burning of villages had been the direct cause of the displacement of the inhabitants of those villages who belonged to various tribes, most of whom were members of the Fur tribe, who fled to the camps, such as those at Deleig and Kalma, near the safe areas where various services were available. Accordingly, the Commission considers that, apart from the incident referred to above, the crime of forcible transfer has not been substantiated and it recommends that that incident should be investigated.

19.15 The events led to the displacement of a large number of citizens, widespread fear and panic, forcing many people to leave their villages for the camps. It was proved to the Commission that the Darfur tribes of different ethnicities were hospitable towards the displaced persons and that no tribe settled by force on the land of any other tribe as the *nazer* (chief) of the Bani Halba and the *nazer* of the Habbaniyah had alleged (section 18 of the report).

20. The current situation in Darfur involves human suffering and international intervention on an unprecedented scale and affords opportunities to various interested parties to exploit it and to various international organizations working in the field of human rights to make accusations concerning violations of the principles of international humanitarian law and human rights law and to exert pressure on their Governments and on international organizations on the basis of information, some of which has been proved by the Commission to be inaccurate, not in accordance with the facts and tending towards exaggeration. This has been the result of several factors, including a disregard of the origins and causes of the problem, addressing its consequences and confusing cause and effect. As a result, the problem was removed from its traditional framework to one encompassing political demands connected with the issues of marginalization and the division of wealth and power. Accordingly, the solution to the problem lies in the merging of its various aspects in their humanitarian, security, economic and political dimensions. The problem hampered the peace negotiations between the Government and the armed opposition. Another cause was the inability of the Darfur states, with their legislative, executive and security institutions, to grasp the problem and to tackle it at the outset. Another cause was the erroneous approach of certain States, which exerted constant pressure on the Government in order to solve the problem. The international community has now begun to rethink that approach in the light of the unfolding of events in the Darfur states and has realized that the only way of addressing the problem is to tackle its root causes and to adopt a political solution that takes account of the legitimate demands of the various parties to the conflict and that the internationalization of the problem in the way that has occurred has done nothing but make it worse.

21. The Commission was unable to make an accurate determination of the number of those killed, but the body of the report establishes that the persons killed on all sides, including the armed forces and the police, does not exceed a few thousand and that the figures put about by the news media and by the reports of a number of international organizations were inaccurate. The Commission adds that its conclusions are based on the investigations it was able to conduct: there was no meeting between the Commission and the armed opposition and it was unable to visit the displaced persons camps in Chad.

22. The loss of life and property as a result of the events in Darfur is highly regrettable and unacceptable. As indicated above, the Commission studied the loss of life but, as regards material losses, it received reports from official bodies, specifically from the Ministry of the Interior, the armed forces, the authorities of the Darfur states, the judiciary and the native administration. Although the Commission viewed the scene of the events and the places where the property losses occurred, it was unable to obtain comprehensive information on the losses sustained by members of the population because a large number of the victims were in camps and could not be questioned individually. It therefore recommends that the investigation of the losses suffered should be referred to a special judicial committee, which

should be provided with all facilities necessary for it to obtain correct figures and information in order to resolve the problem. The Commission's examination of the files of the Public Prosecutor's Office and the judiciary revealed that there were numerous reports, lawsuits and judgements relating to that matter.

23. In short, the recommendations made by the Commission are widely supported by the international community. Examples include statements made by Olusegun Obasanjo, Chairman of the African Union, the report that appeared in *The Times* (London) on 25 September 2002, the report in the British medical journal *The Lancet*, the studies made by a French scientific team led by Evelyn Depoortère, head of the French medical survey group, *Epicentre* and experts of *Médicins sans frontières* (Doctors without Borders), the report in *The Observer* (London) of 3 October 2004 and the reports of the delegation of the Arab Doctors Union and the Organization of the Islamic Conference. There is also other evidence indicating that many members of the armed forces belong to the various Darfur tribes and that the members of the tribes that are alleged to have been victims of genocide take part, at all levels, in the federal Government and in those of the Darfur states, as well as in delegations negotiating with the armed opposition. Finally, there is the fact that the displaced persons migrated to population centres under the control of the Government.

24. It is worth mentioning that, before the increase in the seriousness of the problem during the period from 16 August 2002 to April 2004, the Government organized a number of tribal conferences and sent delegations of leaders of the Fur and Zaghawa tribes to negotiate with the armed groups as well as a high-level delegation of over 30 Darfurians led by the federal Minister of Education and the Governor of Nile State. Moreover, General Ibrahim Suleiman, who was at that time head of the Security Apparatus of the Darfur states, and the authorities of the Darfur states negotiated with the armed opposition and had reached an agreement to resolve the issue a few days prior to the attack on El Fasher in April 2003 (see section 3 of the report).

25. The Commission ascertained the roles played by certain officers and men of the armed forces of Chad in the attacks on the Kulbus area. Witnesses named two officers, Muhammad Jamal and Hussein Jiribo. That may be due to the interpenetration of the tribes in the area, cross-border assistance by members of tribes and acts of robbery on both sides.

(a) The Commission recommends that the alleged extrajudicial executions in the area of Deleig and Tanku should be the subject of a detailed judicial investigation and that those against whom a priori grounds of suspicion are established should be brought to trial, particularly in view of the accusations made against specific individuals.

(b) With regard to the alleged seizure by Arab groups of two Fur villages in Kas locality, the Commission was informed that an administrative investigation by a commission set up by the Governor of South Darfur is currently taking place, as the seriousness and implications of the charges require a prompt response.

(c) The killing of wounded people in the hospitals of Buram, Meleit and Kulbus and the burning of some of them alive should be investigated and measures taken against the perpetrators, particularly as the testimony of witnesses mentioned the names of individuals known to the population.

In the name of God, the Merciful, the Compassionate

Commission of Inquiry to Investigate Alleged Human Rights Violations Committed by Armed Groups in the Darfur states

Appointment of the Commission

The President of the Republic issued Presidential Decision No. 97 of 2004 establishing a commission to investigate the facts concerning alleged violations of human rights committed by armed groups in the Darfur states, as follows:

Presidency of the Republic

Presidential Decision No. 97 of 2004 establishing a commission to investigate alleged human rights violations committed by armed groups in the Darfur states

The President of the Republic:

Having considered article 43 of the Constitution of the Republic of the Sudan of 1998 and in accordance with the provisions of article 2 (1) of the Commissions of Inquiry Act of 1954, has issued the following decision:

Title and entry into force of the decision

1. This Decision shall be referred to as "the Presidential Decision establishing a commission of inquiry to investigate alleged human rights violations committed by armed groups in the Darfur states, 2004". It shall enter into force on its date of signature.

Composition of the Commission

2. (1) An independent and impartial commission is hereby established to investigate alleged human rights violations that may have been committed by armed groups in the Darfur states;

(2) The membership of the Commission shall be as follows:

(a)	His Excellency Daf' Allah Al-Haj Yusef (former head of the judiciary)	Chairman
(b)	Professor Ghazi Suleiman (lawyer)	member
(c)	Lieutenant-General (ret.) Hasan Ahmad Sadiq (former Director-General of the police force)	member
(d)	Lieutenant-General Al-Sirr Muhammad Ahmad (former Commanding Officer of Western Command)	member
(e)	Dr. Fatimah Abd Al-Mahmud (member of the National Assembly)	member
(f)	Professor Hamdtu Mukhtar (Chairman of the Human Rights Committee of the National Assembly)	member

(g)	*Nazer* (Chief) Muhammad Surur Ramli (representative of the native administration)	member
(h)	*Nazer* Abd Al-Qadir Mun'im Mansur (representative of the native administration)	member
(i)	A representative of the Bar Association	
(j)	Professor Fu'ad 'Aid (former administrator)	member and rapporteur

Competence and powers of the Commission

3. The functions of the Commission shall be as follows:

(1) To compile facts and information concerning alleged violations of human rights by armed groups in the Darfur states.

(2) To investigate the facts concerning all the allegations relating to armed groups in the Darfur states and any resulting harm to persons or property.

(3) To ascertain the reasons that led to the violations and to the harm, if any.

(4) To make periodic reports to the President of the Republic concerning its findings.

(5) To seek the assistance of such persons as it may decide in the performance of its tasks.

Working procedures of the Commission

4. (1) The Commission shall follow the procedures set forth in article 9 of the Commissions of Inquiry Act of 1945.

(2) Without prejudice to the generality of the text of paragraph 1 above, the Commission shall take any of the following measures:

(a) Holding hearings.

(b) Study and analysis of evidence available to it.

(c) Perusal of any papers and documents that may assist it in the performance of its functions.

Assistance for the work of the Commission

1. The competent organs of the Presidency of the Republic shall make available all necessary staff to facilitate the work of the Commission and to perform secretarial functions.

Recommendations of the Commission

2. The Commission shall submit a report with its final recommendations to the President of the Republic.

Issued under my signature on 19 Rabi' I A.H. 1425 (8 May A.D. 2004).

Omar Hassan Ahmad Al-Bashir
President of the Republic

It is worth mentioning that the Bar Association chose Professor Omar Al-Faruk Hassan Shamina as its representative on the Commission.

1. Legal basis of the Commission

1. Decision of the President of the Republic.

2. Constitution of the Sudan of 1998.[1]

3. Commissions of Inquiry Act of 1945.[2]

4. General criteria contained in international instruments concerning human rights and violations of international humanitarian law.

The Commission noted that the explanatory memorandum accompanying the Commissions of Inquiry and Fact-finding Commissions Act of 1954 provided as follows:[3]

1. There is no act for the establishment of commissions of inquiry under which they may undertake investigations and inquiries concerning matters of public interest of major importance.

2. There is only the Investigation of Accidents Act of 1952 which merely provides for the investigation of a particular type of event such as accidents resulting in loss of life.

3. There have been accidents, and there may be others in the future, that in the general interest require investigation that will not be easy under the provisions of the current Act. Such investigations would satisfy public opinion.

4. An investigation into any matter of public interest is held by order of the Minister of the Interior and with the approval of the Cabinet; the authority offered for that purpose avoids the necessity of referring the matter to Parliament to have special commissions set up whenever accidents so require.

5. The power conferred by the Act on the said commissions of inquiry is adequate for the purpose for which the commissions are set up.

6. The arrangements for such commissions of inquiry are followed in many countries and the introduction of such an arrangement in the Sudan would be of benefit in the case of matters of public interest.

On studying the explanatory memorandum accompanying the Act, it was clear to us that the basic task of commissions of inquiry set up under the Act is to investigate events and to arrive at the bare facts relating to the event or events that are the subject of the investigation. It is necessary to investigate the facts in accordance with the provisions of the Act, which requires procedures that are judicial both in form and content. Moreover, competence has been conferred on the Commission to enumerate the losses and to establish the reasons that led to the violations.

During the visit of the Secretary-General of the United Nations to the Sudan in connection with Darfur, a communiqué was issued by the Government of the Sudan and the United Nations in Khartoum on 29 June 2004,[4] by which the Government committed itself to:

"Ensure that the Independent Investigation Committee established by presidential decree in May [2004] receives the necessary resources to undertake its work and that its recommendations are fully implemented".

That was followed by Security Council resolution 1556 (2004) of 29 July 2004, which stated in paragraph 14 that the Council:[5]

"*Encourages* the Secretary-General's Special Representative for [the] Sudan and the independent expert of the Commission on Human Rights to work closely with the Government of [the] Sudan in supporting independent investigation of violations of human rights and international humanitarian law in the Darfur region".

The work of the Commission thus took on an international dimension in addition to the fact that the Commission is exercising legal authority under the Commissions of Inquiry Act of 1954 including the authority to take statements under oath, to request documents from any entity, and to call witnesses and take legal measures against them if they refused to appear before it.

2. General guidelines

On that basis, the Commission began its work by establishing the general guidelines that it would comply with in carrying out its task, namely:

1. The Commission shall maintain in its proceedings the highest degree of impartiality.

2. The Commission shall investigate the facts of the matter, hear all those concerned, both inside the country and abroad, without exception, and shall examine all studies, reports, factual evidence and recommendations emanating from conferences dealing with the conflicts in Darfur. In order to ensure a comprehensive investigation of the facts, the Commission recommended that the complaints made to various bodies concerning violations of human rights should be examined.

3. The Commission shall pay particular attention to the reports issued by organizations of the United Nations system and by non-governmental organizations working in the field of human rights, particularly those issued by delegations that visited Darfur.

4. In its meetings with all the diplomatic missions that visited the Sudan and had asked to meet the Commission, it made a point of explaining its terms of reference and its working methods and listening to those delegations and heeding the conclusions they had reached after their visit to Darfur.

5. The Commission shall study relevant material published by the various media at the instigation of international and voluntary organizations, concerned groups, and local, regional and world newspapers, in any medium whatever, including the Internet.

6. The Commission shall study reports emanating from federal entities and those of the constituent states.

7. The Commission shall study the statistics of the Public Prosecutor's Office and judicial organs concerning various crimes in the Darfur states.

8. The investigation shall include hearings of all parties involved in the conflict, visits to sites that are alleged to have been the scene of the events, and the taking of testimony under oath. It shall be documented in written form, by sound recordings and by photography.

A witness takes the oath before the Commission

9. Accordingly, an enumeration was made of violations alleged by all parties and against all parties. The allegations were then investigated through the taking of testimony, visits to sites, the taking of statements under oath and the perusal of all documents in the possession of government bodies and the institutions of civil society. This was recorded in writing, by sound recordings and by photography, in some cases with the assistance of technical experts and forensic doctors. The Commission also informed the armed opposition that it had been established,[6] sent it a copy of the Act and asked it to agree on a place and a time for a meeting with the Commission, either in the Sudan or abroad, in order to receive its testimony, particularly as many human rights violations had been alleged against the armed opposition. Contact was also made by telephone between the Rapporteur of the Commission and Mr. Abd Al-Baqi (the representative of the Movement in Geneva). Unfortunately, however, nothing was received by the Commission from the armed opposition indicating that it was willing to meet the Commission.

3. Geographical and tribal structure of the Darfur states

The Darfur states are located in the extreme west of the Sudan; the states of North, South and West Darfur are between latitude 9° and 20° north and between longitude 16° and 27.2° east. Its total area is 196,404 square miles, or about one fifth of the area of the Sudan.

The Darfur states have frontiers totalling 1,300 kilometres in length with the Libyan Arab Jamahiriya, the Republic of Chad and the Central African Republic. There are no significant natural borders with Chad and the Central African Republic, a fact which has facilitated social, cultural and economic contacts between the people of Darfur and those of the other two States. However, such communication meant that each State has had a significant impact on the other States with regard to security. Although the Sahara Desert forms a barrier between Darfur and the Libyan Arab Jamahiriya, there is a degree of contact between the population of Darfur and the population of the cities in the south of the Libyan Arab Jamahiriya. Such contact has increased as a result of the availability of modern means of transport. There has also for centuries been constant contact between Darfur and Egypt along the "40-day camel route".

Owing to the ease of migration in both directions between Darfur and the neighbouring States, most of the population groups in Darfur, particularly those living along its borders, extend into the neighbouring States, a fact which makes it extremely difficult to distinguish between them, particularly between the inhabitants of Darfur and those of the eastern region of Chad.

A major part of Greater Darfur is home to many tribes which arrived over the course of history in successive waves from the north, the east and the west, particularly since the ninth century, a movement that reached its climax in the middle of the fourteenth century.[7] Since that time, the Arabs began to mingle with the established Sudanese groups leading to the emergence of a series of Islamic sultanates between the mid-fifteenth century and the early nineteenth century. These were the Kingdoms of the Funj in the area of Gezirah and the Fur in Darfur and the Kingdom of Taqali and the Musabba'at in Kordofan,[7] and perhaps the Fur Kingdom, which was founded by Suleiman Solong in the seventeenth century and in 1874 was defeated by Al-Zubair Pasha at the battle of Munwashi. The Kingdom reached the peak of its greatness in the time of Abd Al-Rahman Al-Rashid, who encouraged the

tribes of the north, the Danaquilah and the Ja'liyin, to migrate to Darfur, particularly *ulama* (Islamic scholars) who worked to promote the teaching of religion and engaged in commerce. This continued until the time of Sultan Ali Dinar in 1916, when the Kingdom came to an end and the region of Darfur became part of the Anglo-Egyptian Sudan. That Kingdom was followed by smaller ones such as those of the Zaghawa in the north and the Maidoub, the Burti, the Bargad, the Bargo, the Tangor, the Mima, the Daju and the Bigu.[8] Apart from natural, economic, political and cultural factors which obliged population groups to leave their original homelands, those groups found in Darfur all they required in terms of stability, including the natural environment and the climatic conditions which were suitable for stockraising. The result of those migrations was a cross-fertilization and an ethnic and cultural intermingling between groups of different ethnicities.

While various tribes migrated from their original homes to different parts of the Sudan in order to seek their livelihood, there were some Darfurians who migrated and settled in other regions of the Sudan. For example, there were internal migrations by people from the north and centre of the country to Darfur for purposes of trade. These people form a section of the present-day populations of Darfur in the major cities of Niyala, El-Fasher, Geneina and Meleit. Over the course of history, these people have merged and intermarried with elements of the population of Darfur, contributing to the formation of the Darfurians of today. These migrations included significant numbers of people from West Africa who crossed Darfur on their way to perform the duty of the Hajj and settled in certain regions; even they became part of the demographic structure of Darfur and mingled with the tribes.

It is necessary in this context for the Commission to refer briefly to the tenure or ownership of land in Darfur. On considering this matter from a historical perspective we find that tenure or ownership of land was granted to the tribes by the sultans of Darfur. The sultan had wide powers to grant and allocate land to the tribes, an authority that they exercised for over three centuries. According to custom, the sultan granted a "*hakurah*" [plot of land] to the tribe and according to established custom the "*hakurah*" was a piece of terrain with geographically established boundaries allocated by the sultan as a "*dar*" [home] to the tribe, giving rise to Dar Masalit, Dar Al-Rizaigat, Dar Al-Habbaniyah and so forth.[9] The concept of "*dar*" and "*hakurah*" became an inseparable part of the customary and cultural thinking in Darfur whereby the tribes acquired customary rights of a political and administrative nature.[10] The tribes and the local governmental authorities respected this system and land came to be used for the purposes of raising livestock, agriculture, gathering firewood and hunting, in a system common to all tribes whereby the administrative authority of a tribe was an attribute of the "*dar*". The desertification and drought afflicting the Sahelian and Saharan States led directly to an increase in the rate of migration and displacement of populations to the Sudan from outside. The newcomers brought with them customs and traditions that differed from those of the Darfurian population and this had an adverse effect on the relations that had been created by the land grant system.

According to the population census of 1993, the population of the Darfur states was 4,746,456, although the estimates of the Central Statistical Bureau indicate an increase in the population of the Darfur states to 5,561,000.[11] The population belongs to various tribes such as the Fur, Bani Halba, Tangor, Borty, Habbaniyah, Zaghawa, Zayadia, Rizaigat, Masaleet, Maalia, Taiysha, Maidoub, Bargo, Daju, Bani Hussein, Tama, Mahria, Mohameed, Salamat, Messairia, Eraigat, Etaifat,

Fallata, Ghimir, Bani Mansur, Darug, Selathab, Mima, Turgom, Marareet, Hiwara, Jawami'a and others. The figures concerning the number of tribes differ and the number of depositions by tribes heard by the Commission range from 80 to 143. The reason for the discrepancy in the number of tribes is attributable to differences in the procedures for classifying them; some subdivisions of tribes were classified as though they were independent tribes.

The Darfur states have a varied natural environment and climate: humidity and rainfall are low in its northern regions which border on the Sahara, and increase gradually as one goes south. A poor savannah climate with thorn trees prevails throughout most of Darfur apart from the extreme south adjacent to Bahr Al-Arab where the savannah has luxuriant plant cover of grasses, trees and forests. Because of the altitude of the region of Jabal Marra in central Darfur, its prevailing climate is of the Mediterranean type and it has a fertile volcanic soil, making it suitable for the cultivation of many types of fruits and vegetables.

This variety of climatic and environmental features has given rise to varied forms of economic activity and means of livelihood among the population of the Darfur states: some groups such as the Maidoub, the Zaghawa, the Zayadiya, the northern Rizaigat, the Bani Hussein and others rely mainly on grazing camels, goats, sheep and cattle in northern Darfur. It is known that the groups that rely for their livelihood on raising camels and cattle are constantly moving between the northern and southern regions of Darfur: during the period from January to June they go south in search of pasture for their livestock in order to reduce the pressure on the scarce sources of water in some areas and to avoid tribal friction which often occurs as a result of competition for pasture and water. With the start of the heavy rains in the south they go north, remaining from July to December each year in the extreme north where the lush grass with its high moisture content provides appropriate fodder for camels and dispenses with the need for water.

Many of the tribes in South Darfur such as the Rizaigat, the Habbaniyah, the Taiysha, the Maalia, the Salamat and the Fallata, have preferred to raise cattle because of the suitability of the soil and the grasses that grow in that part of Darfur.

A major part of the population of Darfur, especially in the south, the east and the west, depends mainly on agriculture and is self-sufficient, selling its surplus produce in local markets.

Economic activity in the Darfur states has remained a subsistence economy although a notable change has occurred to this traditional pattern with produce beginning to be sent to both local and foreign markets in a spontaneous response to the contacts that have been established with the Libyan Arab Jamahiriya, Chad and the Central African Republic. In order to encourage cross-border trade and to restrict smuggling, the governments of the Darfur states have established a large number of frontier customs centres and customs posts such as those at Karb Al-Tum, Meleit, Kuttum, Tinah, Geneina, Furbaranga and Kulbus.

Consequently, many Darfurians have turned to growing oilseed crops such as sesame and peanuts, as well as hibiscus and gum arabic for export, as well as buying camels, cattle and sheep in the local markets for fattening in order to provide meat partly for their everyday needs and partly for export to Egypt, Saudi Arabia and the Gulf States. Darfur's link with the railway network has had a significant impact on the growth in economic and agricultural activity.

In general, the tribal structure with all its requirements in terms of land — the "*dar*" — and the administrative arrangements known as the "native administration", as well as customs and traditions, have governed relations among the tribes in times both of peaceful coexistence and conflict and it has been a principal feature of Darfurian society, particularly as regards tribal authority and leadership. For this reason, when the conflict began in Darfur for the reasons mentioned in this report it took on political dimensions that were conducive to sharp polarization and to profound disagreements between the tribes. Throughout the course of history, secret and overt political groupings have appeared in Darfur, expressing tribal and regional demands in a manner that differed from what had occurred in the past in that they were placed within a political framework and formulated various demands: they included such organizations as Red Flames (SONI), the Darfur Renaissance Front, the Arab Rally, and others.

Over 80 tribes live in Darfur and for many centuries remained in a state of coexistence disturbed from time to time by conflicts over resources. As a result of this, there was intermarriage and intermingling between the various tribes and a common culture and common traditions prevailed among the people of Darfur. However, the instability in the neighbouring countries and the waves of drought and desertification which increased the rates of migration and upset the demographic balance were a cause of conflict together with the fact that the waves of migrants settled in the homelands [*dar*] of settled tribes, leading to administrative problems. With the worsening of the controversy over resources, the conflicts took on various political dimensions. These migrants brought with them practices that differed from what had been customary among the Sudanese tribes and this led to a growing culture of violence with its attendant problems and its tendency towards armed robbery.

The Darfur tribes have a deep rooted heritage and traditions with regard to tribal authority and leadership. Every tribe has leaders who have a special place among the members of the tribes and are known by their titles (sultan, king, *dimangawi*, *shartai* [tribal leader], *fursha*, *nazer* [chief], *umda* [village chief], sheikh, and so forth. The duties of a tribal leader include representing the sovereign, looking after the interests of the tribe, maintaining security and peace, both within the tribe and between the tribe and neighbouring tribes, and representing the tribe on various occasions.[9] The relations linking tribal leaders are based on mutual respect and they meet from time to time as the situation with regard to matters of common interest to their tribes may require. The stability of the situation in Darfur was therefore based on two fundamental principles:

1. The regional level of observance of the requirements of balance and harmony between the interests of the different tribes whereby any disturbance of the balance as a result of political factors or controversy between sectors of society gave rise to disputes and to fierce fighting;

2. At the level of central Government, the citizens of Darfur have taken part in all constitutional developments in the country and in all elections that have been held since independence and Darfur has been represented by a prescribed number of seats in the national Parliament in which the centre of gravity in the composition of the various governments during those decades has been determined by the electoral process.

During the last two decades, the elite of Darfur have played an active role in all political developments and in all the decision-making centres in the country. The people of Darfur, with their different racial affiliations, have continued to raise and defend the causes of Darfur at the governmental level as an entity representing a unified region. Many of them have also assumed leadership roles in the armed forces of the Government, the police, the public services, the judiciary and other institutions of the State.

The Commission established that all the tribes of Darfur, without exception, are engaged in two professions — stockbreeding and agriculture — but in differing degrees. This fact has resulted in a disparity in the levels of awareness and education, and in access to employment.

The agricultural and stockbreeding professions were subject to the native administration and the public authorities for the meticulous coordination of the needs of stockbreeding, in terms of specific areas, grazing land and water resources, on the one hand, and, on the other, those of agriculture. This system gradually broke down for various reasons, including the shortage of resources resulting from the growing population and increasing numbers of livestock, tribal disputes over resources, the desire to obtain a greater share of resources, and the administrative measures taken with regard to the refugees from neighbouring countries and migrants from other regions. In addition, there was the adverse impact of political controversy and party infighting at the centre. The native administration was dissolved in the early 1970s, giving rise to a decline in security and in respect for law. This disruption was utilized politically in the formation of customary systems that for a time governed relations between farmers and pastoralists, while the disruption was used by some as a means of opposing authority at the local and governmental levels. As a result of the war which has raged in the south of the country for several decades and which was another expression of the political controversy between the outlying regions and the Government, the political dispute in Darfur, with its tribal antecedents, took on a regional dimension with the emergence of armed groups that had decided to fight against the central Government under the slogan of "marginalization". This is indicative of the close link between the Sudan People's Liberation Movement in the south and the movements seeking to obtain their objectives by force of arms, not only in Darfur but also in the Nuba Mountains and in the southern Blue Nile State and in East Darfur and the Abyei area. The controversy between the outlying regions and the central Government is categorized as a religious controversy in the south, and a racial one in Darfur. That perception is confused and misses the truth and root causes of the controversy. Efforts have been made to address its consequences and its human impact. Moreover the taking up of arms against the State as an expression of feelings of injustice and marginalization has been addressed from a security perspective which has not produced a solution to the problem and has, in some cases, had adverse consequences. The approach adopted in the majority of cases has not solved the problem, in particular because the efforts made on behalf of development and the provision of essential services — despite the increase that occurred in that respect during the last two decades — was short-lived and of little value in relation to the magnitude of the problem, the true dimensions of which were not grasped. Moreover, the problem was not fully appreciated by the population which regarded it primarily as a political matter and did not evaluate it objectively. This complicated the matter still further.

4. Background of the conflicts

The civil strife in Chad, the constant changes in the ruling regime in that country, and the fact that Darfur was the focus of civil strife because of the tribal overlap along the entire frontier strip with neighbouring countries totalling 1,300 kilometres in length, resulted in the entry of large quantities of weapons into Darfur from nearby States and from further afield. Some estimates put the quantity of weapons at present in Darfur at over a million items of sophisticated weaponry.[12] This had two major consequences: weapons could easily be obtained and arms trafficking increased among the population of the region. Moreover, the carrying of weapons in Darfur is a feature of society and an aspect of popular culture. The situation encouraged the tribes, without exception, to set up militias armed with sophisticated weapons. It also led to certain forms of behaviour alien to Darfurian society such as armed robbery, which intensified in the 1980s, and to the appearance of the groups known as "the Janjaweed". Other results were the emergence of cross-border crime in the form of smuggling of stolen livestock, particularly camels and cattle, to neighbouring States and the escalation of armed robbery into something which, in its planning and implementation, resembled organized crime in which renegades from all the tribes, with their different racial affiliations, from both outside and inside the Sudan, took part. This placed new burdens on the State as the entity responsible for maintaining security. The proliferation of weapons in comparison with earlier decades also led to an increase in human casualties and material losses caused by intertribal revenge killings and disputes and an unwillingness to return stolen property. Such instability and anarchy, and the scant respect for authority, may have been instrumental in the change whereby regional and tribal political movements became movements relying on weapons as one of the means of obtaining their ends.

The increase in the number of armed conflicts and the changes in the form they have taken has overstretched the security bodies — the armed forces, the police and the security forces — as indicated by the redoubling of those forces largely to deal with the breakdown in security. Deterrent sentences have been imposed on hundreds of outlaws some of whom have been condemned to death.[13] Such situations had previously been concluded on the basis of reconciliation and the payment of blood money that was customary among the tribes.[12,14]

Nevertheless, the people of Darfur were able to live together in relative peace and to resolve problems that arose in the traditional way through "*al-ajawid*" (magnanimity), reconciliation councils and tribal conferences. However, the fact that the problems had taken on political dimensions, with infighting and the involvement of the political parties, and had changed into a controversy between authority and the bearers of arms undermined the role of the native administration and deprived it of its influence. Consequently, there was a multiplicity of reconciliation conferences and the items on their agenda, which had previously consisted of limited disputes concerning resources, development and services, were major issues with implications for the region, its tribes, its administrative and security arrangements and the division of wealth and authority. The objective was to arrive at final recommendations aimed at solving major problems at the regional level. It had been hoped that these conferences would lead to a resolution of the problems but unfortunately there was no way of giving effect to their recommendations. Accordingly, the problems cropped up repeatedly and with increasing frequency. Among the reasons for the lack of any positive outcome for

the conferences was the absence of any specific organ to follow up the implementation of their decisions. This exacerbated the problems, which had become the norm, and the political forces and successive Governments were unable to assess their implications and their future consequences.

What is stated above comes down to one important fact, namely that the current situation in Darfur should be seen against the background of many contributory factors, chief among them being the decreasing role of the native administration as a result of the decision taken in 1970 to dissolve it. The attempt to find a replacement for it did not give the people of Darfur what they needed in terms of stability and peaceful coexistence. In addition, there was a change in the value system that had regulated Darfurian society as well as the instability of the situation in the neighbouring countries and the attendant proliferation of weapons and all it entailed. What complicated matters still further were the acute political controversies within Sudanese society which also cast their shadow over the society of Darfur.

4.1 List of major tribal disputes in Darfur (1932-2001)

The table that appears below shows the major disputes that arose and the means by which they were resolved by the native administration or by peace conferences, or by the intervention of the authorities. There were also many minor disputes that are not listed.[15,16]

Number	*Tribes in dispute*	*Reason*	*Means of settlement*	*Date*	*State*
1	Kababish, Kawahila, Burti (A), Zayadia (A), Maidoub (B)	Pasture	Native administration	1932	North Darfur
2	Burti, Zayadia (A)	Tribal Tithes and boundaries	Native administration	1956	North Darfur
3	Maidoub, Zayadia, Kababish (A)	Malha convention	Native administration	1957	North Darfur
4	Zayadia, Burti (A)	Tribal boundaries	Native administration	1965	North Darfur
5	Maalia (A), Rizaigat (A)	Tribal	Native administration	1964	South Darfur
6	Maidoub, Kababish (A)	Murder and robbery	Native administration	1975	North Darfur
7	Zaghawa, Zaghawa (A)	Water resources	Native administration	1976	North Darfur
8	Bani Halba (A), Rizaigat (A)	Tribal	Native administration	1975	South Darfur
9	Rizaigat (A), Dinka (B)	Pastoralists vs. farmers	Government intervention	1976	South Darfur
10	Taiysha (A), Salamat (A)	Pastoralists vs. farmers	Government intervention	1978	South Darfur
11	Rizaigat (A), Masiriya (A)	Pastoralists vs. farmers	Native administration	1979	South Darfur
12	Bani Halba (A), Rizaigat (A)	Tribal reprisals	Government	1982	South Darfur
13	Burti (A), Kababish (A)	Tribal	Government	1983	North Darfur
14	Fallata (B), Gamar (A)	Tribal	Government and native administration	1984	South Darfur
15	Rizaigat (A), Dinka (B)	Tribal	Government	1986	South Darfur

Number	Tribes in dispute	Reason	Means of settlement	Date	State
16	Fur (B), Arabs	Pastoralists vs. farmers	Government	1986	South Darfur
17	Zaghawa (B), Gamar (A)	Tribal	Government and native administration	1987	North and West Darfur
18	Zaghawa (B), Gamar (A)	Robbery	Government	1989	North and West Darfur
19	Zaghawa (B), Maalia (A)	Reprisal	Tribal conference	1990	South Darfur
20	Zaghawa (B), Rizaigat (A)	Tribal	Tribal conference	1990	South Darfur
21	Zaghawa (B), Bani Hussein (A)	Tribal	Government	1991	North Darfur
22	Zaghawa (B), Mima (B)	Robbery	Government	1991	North Darfur
23	Zaghawa (B), Bargad (B)	Robbery	Government	1991	South Darfur
24	Turgom (A), Fur (B)	Pastoralists vs. farmers	Government	1991	South Darfur
25	Zaghawa (B), Rizaigat (A)	Reprisal	Government	1993	South Darfur
26	Zaghawa (B), Zaghawa	Tribal	Native administration	1996	North Darfur
27	Masaleet (B), Arabs	Pastoralists vs. farmers	Native administration	1996	West Darfur
28	Zaghawa (B), Rizaigat (A)	Tribal	Government	1996	South Darfur
29	Masaleet (B), Arab tribes	Tribal	Government	1998	West Darfur
30	Rizaigat (A), Dinka (B)	Reprisal	Government	1998	South Darfur
31	Daju (B), Rizaigat (A)	Farmers vs. pastoralists	Government	1998	South Darfur
32	Fur (B), Rizaigat (A)	Tribal	Government	1999	South Darfur
33	Masaleet (B), Arabs	Reprisal	Government	2000	West Darfur
34	Zaghawa (A), Gamar (A)	Robbery	Government	2000	North Darfur
35	Burti (A), Maidoub (A)	Tribal	Government	2000	North Darfur
36	Rizaigat (A), Awlad Mansour (A)	Tribal	Native administration	2001	South Darfur

A: Of Arab stock
B: Of non-Arab stock

It is clear from the above list that the disputes were based not purely on ethnicity but on the reasons we have already discussed. As a result of the inter-penetration and intermingling of tribes and races in Darfur and the existence of branches of tribes within unified administrations linking them with branches of other tribes sharing common interests, it is very difficult to categorize the controversies in Darfur on the basis of ethnicity alone, in the sense of one ethnic group aiming to annihilate another group. That being so, it is inaccurate to state that the society of Darfur is divided into purely Arab tribes and purely black African tribes. The reason for this is the continuous ethnic mingling which did not stop even after the security situation in Darfur had deteriorated. To exemplify this, we give the following statistics for the period from January 2001 to May 2003:[17]

1. 87 young men from the south married women belonging to tribes of Arab stock;

2. 21 young men from Arab tribes married women belonging to tribes of non-Arab stock;

3. The civil birth registers of Greater Darfur record 473 cases of marriage between women from Arab tribes and men from the Zaghawa and the Fur tribes.

These figures indicate the constant ethnic mixing that is taking place despite the situation of conflict. These are recorded cases and represent only an insignificant part of the true picture. They prove the falsity of allegations of racial differentiation and the consequential ethnic cleansing and genocide.

4.2 To refer to the tribes of African stock as coloured and to those of Arab stock as Arabs is a dubious concept that was politicized and took many forms with the politicization of the problem during the last two decades of the twentieth century. Moreover, Greater Darfur, which includes all the tribes within a constitutional order as a cohesive unit that participates in political development and administrative restructuring, did not come into existence through narrow tribal divisions and the problems leading to the decline in the level of development and in services and to marginalization are something from which all of Darfurian society, with all its tribal components, suffers.

4.3 The tribal conferences proved their effectiveness in containing and resolving these disputes, even if only to a limited extent. However, sufficient attention was not paid by the governments of the Darfur states, and by the federal Government, to some of the recommendations and decisions of these conferences concerning, for example, the deferment of the payment of blood money and withholding payment of it to its beneficiaries. Consequently, the conflict recurred from time to time, particularly in places where resources were shared. Most of those who testified to the Commission agreed that the recommendations and decisions of the peace conferences corresponded to what had been agreed upon by the people of Darfur and that, if they had been implemented and had come into force, the problem of Darfur would not have deteriorated to such an extent. This applies particularly to the following:[75]

1. The tribal peace conference between the Fur and certain Arab tribes, which met in El Fasher from 15 April to 8 July 1989;

2. The comprehensive security and peaceful coexistence conference of the Darfur states, which met from 17 to 22 December 1997;

3. The consultative assembly of leaders held in El Fasher from 24 to 25 February 2003.

4.4 It is worth mentioning that after the declaration of the anti-governmental Darfur Liberation Movement, which was later known as the Sudan Liberation Movement, instances of fighting against the Government, began to occur including the incidents at Umm Garaz, Shawba, Qaylu, Rakarul, Tawur, Nairtati, and elsewhere. That being so, a commission of Darfurians was set up to maintain security and address the problems and was granted authority by the President of the Republic in May 2002.

In addition, in the context of its efforts to contain the problem, the government of North Darfur took the following steps:[76]

1. It convened a conference of the Fur tribe from 16 to 22 August 2002 to address the problem in the area of Nairtati;

2. It convened a conference of 60 tribes from 11 to 13 September 2002 concerning Jabal Marra;

3. On 13 December 2002, it sent a delegation of leaders of the Fur tribe to negotiate with the rebels in the Jabal Marra uplands with full authority to reach a solution;

4. In October 2002, it enlisted the help of notables and tribal leaders of the Fur and sent them to Jabal Marra to negotiate with the armed opposition;

5. In November and December 2002, it was able to induce members of the armed opposition to talk with it, provided them with assurances and took them to the city of El Fasher where talks were held with them in the office of the Governor of North Darfur in an attempt to reach an agreement;

6. In February 2003, it convened a general meeting of the people of Darfur and its various tribes in the city of El Fasher which was attended by over a thousand Darfurian leaders;

7. In February and March 2003, it sent three delegations of the Fur, the Zaghawa and the Arab tribes to the locations of the armed opposition and of other armed groups in Jabal Marra, Dar Zaghawa and Jibal Kargu to address the matter;

8. It sent a delegation comprising the federal Minister of Education and the Governor of Nile State, who were Darfurians, to negotiate with the armed opposition in their locations in the mountains and the forests, together with 31 Darfurian leaders from various tribes, who spent a month talking with the rebels but in the end the rebels took away some of their vehicles and the delegation left without reaching agreement;

9. In September 2002, it responded to the first initiative of President Idriss Déby of Chad in Abéché;

10. In November 2003, it responded and continued the second round of negotiations in Abéché;

11. In December 2003, it sent a third delegation to the first round of talks in N'Djamena;

12. In early April 2004, it sent a fourth delegation to N'Djamena to continue the talks;

13. In late April 2004, it sent a fifth delegation to N'Djamena to continue the talks.

It is clear from this that great efforts were made to contain the problem and resolve it peacefully but that those efforts failed because the armed opposition persisted in their armed attacks in order to force the Government to grant their political demands. It was clear to the Commission that the position of the government of North Darfur involved an element of miscalculation and that what was happening was an armed rebellion with long-term objectives related to the concept of the distribution of power and to the causes of the marginalized population rather than a controversy over local demands as had previously been the case.

5. Factors underlying the deterioration of security in Darfur

1. The civil conflict in Chad and the conflict between the Libyan Arab Jamahiriya and Chad exacerbated the conflict because:

(a) They resulted in the entry of large quantities of relatively sophisticated weapons;

(b) They increased the seriousness of the phenomenon of armed robbery;

(c) The tribes joined forces across the international frontiers. That inevitably entailed the entry of large numbers of people of Arab and African stock from Chad with customs that differed from those that had prevailed in the Sudan. The Sudanese members of those tribes had for many decades submitted to authority, whether that of the central Government, or local or tribal authority, on the principle that that ensured their continued coexistence. This was in contrast to the Chadian experience with its established heinous practices of murder, pillage, robbery and torture.

2. There was a shortage of resources due to the increase in the population, greater competition for those resources, an increase in the area under cultivation at the expense of grazing land, and a greater flow of refugees, leading to the collapse of the system of tracks as illustrated in section 3.

3. Drought and desertification which afflicted West Africa in the early 1980s led to the immigration and displacement of tribes from the neighbouring countries.

4. Armed robbery, in which renegades from all tribes took part and which was the result of economic factors and of the inability of migrants to earn their livelihood, developed into something resembling organized cross-border crime.

5. There were continual political changes in the governing regime of Chad based on tribal considerations and the people responsible for that made their main bases for seizing power in Chad in the Sudan, leaving in Sudanese territory much of their weaponry and equipment.[12] They were constantly supported with weapons provided by a number of intelligence agencies of other States, particularly Israel.[12] The book *Smuggling Arms to Africa*[19] written by a number of European researchers and specialists states that large parts of Africa, particularly Darfur in west Sudan, has become a market for trafficking in arms from Israel. The leaders of the armed opposition visited Israel several times and received training from senior Israeli army personnel. The book revealed that, during the past four decades, the continent of Africa has become the focus of Israeli arms trafficking networks to the point where 60 per cent of African States have become a prey to armed violence or civil war.

6. The overall economic situation from which the country has been suffering as a result of the economic blockade and the depletion of resources in the war taking place in the south and the halting of development projects such as the West Darfur development project, the savannah project, the ostrich farm project, and the delay in the implementation of the western relief road all contributed to the spread of unemployment, and thus to the deterioration in the security situation.

7. Since the 1980s, the armed opposition, represented mainly by the Sudan People's Liberation Movement led by the Lieutenant Colonel John Garang has stepped up its attempts to reach central and west Darfur and the associated movements belonging to the political movements abroad created a favourable climate for armed action by a number of groups in Darfur in an attempt to realize

their ideas involving the sharing of resources and power, concentrating on the issue of marginalization and calling for a New Sudan. This was accompanied by outside diplomatic, political and media support by several regional and international entities which were unaware of the true historical reasons for the conflict in Darfur.

8. There was a political power struggle within the central Government and a consequential political fragmentation and attempts to polarize the tribes in Darfur. In addition, the redivision of Darfur into states, governorates and localities along tribal lines was a factor in the politicization of the disputes.

9. Irrational discussion in the media which, partly because of the media blackout, was not based on documented information was instrumental in igniting the dispute and divorcing it from its true framework. The dispute was thus internationalized and its scale exaggerated.

10. Non-compliance with the decisions of the peace conferences due to the absence of an effective implementation machinery perpetuated and exacerbated the problems, thus offering an opportunity for their exploitation on an international scale.

11. Owing to the current international situation and efforts to secure new spheres of influence, the strategic and economic importance of the region heightened regional and international interest and cupidity with regard to it.

12. Despite constitutional and administrative developments in the country, including those in Greater Darfur, subsequent to regional and federal rule and the establishment by the states of their own executive and legislative organs, and intense political work by the governmental authorities and the various political parties, the authorities at all levels were unable to comprehend those factors or to take into account their implications; they treated them as events that violated the law. A case in point was the failure to be meticulous in ensuring that the executive organs that were appointed had the required competence and experience.

6.

The conferences held in Darfur since 1989 had confirmed the signs of the deterioration in security referred to above and their adverse repercussions on the fabric of society in Darfur and they put forward appropriate recommendations. However, because the recommendations were not implemented and because there were no effective implementation mechanisms, the situation deteriorated.

7. Hearings

7.1 Given the above background, the Commission set about obtaining basic information from various sources, both oral and written, and convened the following hearings in Khartoum (annex II):

1. Organizations of civil society in Darfur (27 May 2004);
2. Deputies of Darfur states in the National Assembly (1 June 2004);
3. Deputies of Darfur states in the National Assembly (8 June 2004);
4. Representatives of organizations of civil society (13 June 2004);
5. Mr. Mahmud Bashir Jamaa (30 June 2004);

6. Citizens of Kulbus locality (4 July 2004);

7. Citizens of the city of Kuttum (8 July 2004);

8. Darfur Lawyers Committee (13 July 2004);

9. Mr. Ahmad Harun, Minister of State at the Ministry of Interior (20 July 2004);

10. Hearing of testimony from officials of the Ministry of Defence (8 August 2004);

11. Heads of judicial and jurisprudencial bodies in the Darfur states;

12. Hearing of statements by representatives of the security bodies in Darfur;

13. Mr. Abdullah Masar, Governor of River Nile state (9 October 2004);

14. General Ibrahim Suleiman, former Governor of North Darfur (5 October 2004);

15. General Al-Tayyib Abd Al-Rahman Mukhtar, former Governor of West Kordofan and former Minister of Finance of South Darfur (10 October 2004);

16. Muhammad Ahmad Al-Fadhl, Minister of State in the Bureau of Federal Rule and former Governor of West Darfur (13 October 2004);

17. Ambassador Hassan Bashir, Former Ambassador of the Sudan in Chad (31 October 2004);

18. Sheik Musa Halal, Sheik of the Mohameed tribe (28 November 2004).

Their testimony can be summarized as follows:

1. There was agreement that what is happening in Darfur is a major disaster which has had an impact on the social fabric and has led to the perpetration of crimes against civilians and to the displacement of large numbers of people, thereby affecting the economic situation and causing the loss of agricultural crops.

2. All agreed on the need to solve the Darfur problem politically because that is the only means of putting an end to the humanitarian suffering and because all the problems of Darfur throughout history have been resolved politically and by mutual consent involving the participation of all parties and taking into account the composition of the population.

3. The spread of acts of violence among all parties has resulted in the killing and rape of civilians of various tribes and their displacement to the major towns of Darfur; as a result of that, camps have been established for displaced persons and for refugees to Chad.

4. The administrative decisions and some of the subsequent and mutually contradictory legislation relating to land tenure (*al-hawakir*) have resulted in disputes over land tenure which, over a long period, were adjudicated by a well known, traditional and independent native system.

5. The fact that Darfur was taken as the base from which all the movements advocating change in Chad started out over the last few decades has been the direct

cause of the spread of weapons, the destabilization of security and the loss of prestige of the State.

6. The armed attacks that have been made on certain areas have taken place with the cooperation of units of the army of Chad.

7. Some of the tribes have armed themselves in self-defence and have therefore been able to attack other tribes.

8. There was all-round agreement that the meaning and connotation of the term "the Janjaweed" is obscure and that opinions differ as to how it should be understood and interpreted. That disagreement now constitutes the primary focus of all the decisions and resolutions promulgated by foreign entities with respect to the Sudan; the Government is being accused of having armed and trained the Janjaweed in order to make use of them in fighting against the armed opposition and that it selected the Janjaweed from among specifically Arab tribes. There was also general agreement that the phenomenon of the Janjaweed arose as a result of many factors including armed robbery, the displaced persons coming from neighbouring countries, the proliferation of weapons, the relations linking renegades both in the Sudan and abroad and the tribal conflicts that have prevailed in the last two decades, together with the weakness of the security resources of the State and the weakness of the native administration. This phenomenon has led to the formation of groups from all tribes within their different affiliations linked by their own interests and engaging in armed robbery of the livestock of various tribes and working together with other groups in Chad and the Central African Republic in order to protect themselves and ensure the greatest profit from the stolen cattle in an operation similar to money-laundering. The terms "hot cattle" and "cold cattle" are commonly used to denote the substitution of stolen cattle by other cattle from neighbouring States. The Janjaweed have remained a security concern for successive Governments and a number of them have been arrested and brought to trial. Their actions have become violent in the conditions of insecurity, confusion and armed conflict between tribes. It is worth mentioning Jemera Rone, a researcher in the Africa Division of Human Rights Watch, recognized this fact, mentioning that some of the Janjaweed were from the Zaghawa tribe and some from other tribes. She also said that she had received reports that the Janjaweed were burning villages on their own initiative and that they were also attacking villages that were being attacked by government forces in which there were small numbers of members of the armed resistance.[20]

9. Some civilians were injured in the course of the aerial bombing of a number of villages and districts.

10. The armed opposition has targeted police posts and a number of governmental installations such as customs and alms tax offices and banks, as well as leaders of the native administration who did not support them, and has also attacked relief convoys.

11. Not all those bearing arms belong to tribes classified as non-Arab; they include some groups belonging to Arab tribes.

12. The tribal conflict has recently taken several different forms: for example, pastoralists have blocked the access of the settled population to water sources and have also destroyed crops. Most recently, farmers have destroyed grazing land and have buried sources of water.

13. Assistance has been provided by Governments of neighbouring countries and by the tribes of those countries to specific Darfur tribes with tribal links and common interests.

14. The operations conducted by the armed opposition which included El Fasher, Kuttum, Buram, Tinah, Meleit, Tawila, Kulbus, Halilat, Karakir, Abu Gumra, Wadd Hijam, Goz, Quraydah and Radom, and the casualties among civilians, the armed forces and the police, created a security vacuum in the Darfur states, thus prompting the authorities to take measures to address the situation, including the mobilization of civilians. Many civilians from different tribes responded to the call, the greatest response being from members of tribes of Arab stock who were afraid of being targeted. There was also a response from tribes of non-Arab stock such as the Masaleet, the Fur and others, some of whom had joined the armed opposition after they had been trained and armed.

The testimony included certain violations that figured in the list of violations and these were verified by the Commission.

7.2 The Commission also heard representatives of foreign organizations (annex III):

1. The Special Rapporteur of the United Nations on Extrajudicial Executions (10 June 2004);
2. The African News Agency (22 June 2004);
3. The Deputy Minister for Foreign Affairs of Italy for Humanitarian Affairs and his accompanying delegation (23 June 2004);
4. The ambassadors of the European Union in the Sudan (29 June 2004);
5. A delegation from the United Kingdom House of Commons (30 June 2004);
6. The Assistant Secretary-General of the United Nations for Humanitarian Affairs (5 July 2004);
7. The African Commission on Human and People's Rights (17 July 2004);
8. The representative of the African Union for Darfur (3 August 2004);
9. The Assistant Secretary-General of the Arab League;
10. The Chargé d'affaires of Canada to the Sudan;
11. The advance delegation of Amnesty International;
12. The European Commission on Human Rights;
13. A member of the Canadian Senate and the Ambassador of Canada to Ethiopia;
14. The Special Rapporteur on violence against women;
15. The High Commissioner for Human Rights of the United Nations;
16. The Executive Director of Human Rights Watch;
17. The Executive Director of Amnesty International;
18. The International Commission of Inquiry concerning Genocide in Darfur;

19. The Commission of Investigation on Darfur of the Pan African Parliament;

20. The delegation of the African Caribbean Pacific Group (5 December 2005).

These meetings took place before and after the visits by those delegations and missions to the Darfur states and the testimony they provided can be summarized as follows:

1. What is happening in Darfur is a humanitarian disaster that requires joint efforts by the international community to avert the dangers to which it gives rise.

2. The constant increase in the number of displaced persons and refugees indicates that their lives and property will be at risk if they return to their regions of origin and their homes.

3. The displaced persons are fearful and lack confidence in the official bodies. Consequently a great deal of effort will be required to build up their confidence and self-assurance if they are to return to their homes.

4. The living conditions in the camps are continually improving and the foreign organizations are carrying out their work without significant difficulties.

5. Serious violations of human rights have taken place in all regions of Darfur and the arrest and bringing to trial of the perpetrators is an important matter for the international community as it will restrict further violations.

6. The Government is responsible for providing security for the population.

7. The delegations gave assurances of their readiness to cooperate with the Commission in the performance of its tasks.

7.3 The Commission noted that some of these delegations had preconceived ideas about the situation in Darfur. This is attributable primarily to the statements of Mr. Mukesh Kapila,[21] the former Resident Representative of the United Nations in the Sudan, who made statements in Nairobi on 19 March 2004, characterizing what was happening in Darfur as ethnic cleansing, accusing certain Arab groups of conducting campaigns affecting over a million people, and comparing the situation to the genocide that took place in Rwanda in 1994. This was followed on 2 April 2004 by a statement from the United Nations Under-Secretary-General for Humanitarian Affairs and Emergency Relief Coordinator,[22] in which he described what was happening in Darfur as ethnic cleansing. On 7 April 2004 the Secretary-General of the United Nations, addressing the United Nations Commission on Human Rights on the tenth anniversary of the genocide in Rwanda, referred to the report of the Under-Secretary-General of the United Nations on Darfur and asked for human rights and relief workers to be allowed to go to Darfur without restrictions.[22] Some of these successive statements were not based on specific events but they had an impact on world public opinion and were covered by the world's media.

7.4 These preconceived condemnations were manifest in the statement made to the Commission by Mr. Kenneth Roth, Executive Director of Human Rights Watch, who said: "We are concerned at the attacks against civilians and are convinced that there are important steps that the Government should take to give the displaced persons a sense of security, namely to provide protection for them, to bring the perpetrators of

human rights violations to trial and to stop the cycle of reprisal. To do so will reflect an international wish to do justice." In his testimony, Mr. Roth mentioned that the International Commission of Inquiry on Darfur would soon be arriving and would focus on the subject of bringing to trial those responsible for genocide and that, if the Government failed to do so, the criminals would be handed over to the International Criminal Court and that if those responsible for such crimes were not identified on the pretext that they were not known, that would not be acceptable. He went on to say that the matter was a subject of concern to the international community and that it would be preposterous for the judicial organs in the Sudan to wait until people complained as one judicial official had said. Mr. Roth said that he knew the Chairman of the International Commission of Inquiry on Darfur to be an expert in the field of human rights and international humanitarian law, that he knew how he would go about his work and that, if the Government did not carry out its duty to bring those responsible to trial, he would bring the matter to the Security Council, saying that he knew all the members of the Council well and had close contacts with them.[23] From what Mr. Roth told the Commission it was clear that the international human rights organizations played an influential role in the resolutions that were adopted on this problem and that the positions adopted by those organizations were based on inaccurate information. The difference between the content of the reports of foreign organizations and the real truth will be clear from the conclusions reached by the Commission in this report. That was corroborated by the campaign launched by certain humanitarian organizations concerning the resolution on the Sudan adopted by the Security Council in Nairobi. Those organizations were calling on the European Union to intervene to impose sanctions on the Government of the Sudan. The Commission wishes to affirm its trust in, and respect for, the International Commission of Inquiry on Darfur, which are unaffected by the statement of Mr. Kenneth Roth.

8. Reports and documents

The Commission studied the reports of all the relevant federal ministries, namely those of the Ministry of the Interior, the Ministry of Defence and National Security, the Ministry of Foreign Affairs, the Ministry of Humanitarian Affairs and the Ministry of Justice. It also received reports from the governments of the three Darfur states. It studied all the publications and documents issued by the various international organizations working in the field of human rights, and also some reports ascribed to the armed opposition and reports available in the various news media such as those published by Dr. Hussein Adam Al-Hajj on the Internet. In addition, the Commission also monitored the material published in local and world newspapers on the subject of Darfur and consulted the reports of meetings of the United States Congress, the resolutions of the Security Council and the deliberations of the panel discussion on this subject at the Holocaust Memorial Museum.

9. Monitoring and classification of allegations

On the basis of the above, the Commission prepared lists of violations sent to various entities, indicating the accuser and the accused, the type, date and source of each violation and where it was committed (annex III).

10. Field visits

10.1 First visit

In the light of the allegations made to it, the Commission began the process of investigation and verification, making a first field visit to the three Darfur states where it visited a number of camps, looking into the conditions of the displaced persons, talking to some of the victims and their relatives, and meeting those responsible for camp administration. It also met with the Governors, the heads of security and of the judicial organs, heard statements by the security commissions of the three states and met members of the native administration and organizations of civil society and all non-governmental organizations working in the field of relief and humanitarian assistance. It studied all the reports that had been prepared in the Darfur states and added to the lists that had been prepared a number of allegations that were brought to its attention during those visits. The Commission made the following summary of the types of violations of human rights:

1. Burning of villages;
2. Extrajudicial killings;
3. Endangering the life of civilians;
4. Internment;
5. Torture;
6. Rape;
7. Abduction;
8. Plunder of civilian property;
9. Forcible transfer and ethnic cleansing;
10. Genocide.

10.2 List of alleged violations

The Commission summarized the above in the form of the following list of allegations of different violations for investigation:

Violation	*Source*	*Accused*
1. Burning of villages		
21 villages in South Darfur	Human Rights Watch (2 July 2004)	Government of the Sudan, the Janjaweed
200 villages in Wadi Salih	Testimony of Shartai Muhammad Bashir (27 May 2004)	Government of the Sudan
An unspecified number of villages	Testimony of Sheik Hamad Abdullah (27 March 2004)	Armed rebels
435 villages	Sudan Human Rights Group	Government of the Sudan, the Janjaweed

Violation	*Source*	*Accused*
7 villages in the area of Geneina	Memorandum of the Darfur Lawyer's Committee	Major Ahmad Abd Al-Rahim Shukrata Allah
2 villages (Haskintah, Tarshanah)	Human Rights Watch (6 July 2004)	Major Ahmad Abd Al-Rahim Shukrata Allah
2. Killings		
802 people	Human Rights Watch report (6 July 2004)	The Government, the Janjaweed
29 people	Report of the Ministry of Justice (31 May 2004)	The armed forces, the Liberation, Justice and Equality Movement
Over 30 people	Armed Forces report (8 June 2004)	Liberation, Justice and Equality Movement
98 per cent of murders in Darfur	An official of Save the Children addressing Congress	Government of the Sudan
Over 50 people	Memorandum of the Darfur Lawyers (3 July 2004)	The Janjaweed
10 people	Sheik Hamad Abdullah (27 May 2004)	The Fur, the Zaghawa
40 people	Hassan Hud (a citizen of Kuttum)	The Janjaweed
127 people	Testimony of Darfur delegates (8 June 2004)	Various bodies
1,000 people	Shartai Muhammad Muhammad Sarraj	The Janjaweed
347 people	Chiefs and elders of the Darfur administration in the Kas locality	The Janjaweed
471 people	Memorandum of Dr. Hussein Adam (*Sudanile*)	The Janjaweed and armed groups
476 members of the police force	Ministry of the Interior	The armed opposition
3 people in the market of Qukar, south of Geneina	Memorandum of the Darfur Lawyers Committee (3 July 2004)	Major Ahmad Abd Al-Rahim Shukrat Allah
Murder of civilians and torture in Souq Talas, south-east of Geneina	Memorandum of the Darfur Lawyers Committee (3 July 2004)	Major Ahmad Abd Al-Rahim Shukrat Allah
3. Rape and sexual violence		
109	Human Rights Watch (6 July 2004)	The Government, the Janjaweed
Unspecified number	Memorandum of the Darfur lawyers (3 July 2004)	The Sudanese army

Violation	Source	Accused
4. Forcible transfer		
Over 14 villages	Human Rights Watch report (6 July 2004)	The Government, the Janjaweed
21 villages in West Darfur	Human Rights Watch report (6 July 2004)	The Government, the Janjaweed
5. Internment, torture and abduction		
63 people	Ministry of Justice report (31 May 2004)	Intelligence service, military intelligence
77 people	Report of the Sudanese intelligence service	Intelligence service, military intelligence
6. Bombing of civilians, endangering the life of citizens, plunder of property		
5 villages	Human Rights Watch report (6 July 2004)	Government of the Sudan
5 villages	Memorandum of the Darfur lawyers (3 July 2004)	Sudanese army
7. Genocide and ethnic cleansing		
	Former Resident Representative of the United Nations in the Sudan (29 March 2004)	Government of the Sudan
	United States House of Representatives (6 October 2004)	Government of the Sudan
	Representative of the Secretary-General of the United Nations for Humanitarian Affairs	Government of the Sudan
8. Extrajudicial killings		
118	World Organization against Torture (Report of the Ministry of Justice)	Government of the Sudan, the Janjaweed
127	Abd Al-Jibar Adam, member of the National Assembly	Sudanese army
Not specified	Memorandum of the Darfur Lawyers Committee (4 July 2004)	Government of the Sudan
145 South Deleig	Human Rights Watch report (6 July 2004)	Government of the Sudan
65 South Deleig	Human Rights Watch report (6 July 2004)	Government of the Sudan

10.3 Second visit

After studying the findings of the first visit, the Commission mandated some of its members to make a second visit to complete the process of verifying the accusations in all areas that were alleged to have been the locations of the violations

and acts that were the subject of allegations. This visit covered the areas that had been monitored, which appeared in the list of violations and which the security situation made it possible to visit, namely the following:

North Darfur

(a) Kuttum locality: the city of Kuttum and the villages of Fatabirno, Kadkal and Amr Allah;

(b) Melcit locality: city of Melcit;

(c) El Fasher locality: area of Tawila and city of El Fasher.

West Darfur

(a) Kulbus locality: city of Kulbus and area of Sali'ah;

(b) Wadi Salih locality: villages of Arula, Dalij and Tunku;

(c) Geneina locality: city of Geneina and several surrounding villages.

South Darfur

(a) Buram locality: city of Buram;

(b) Niyala locality: Sanya Dalibah and Niyala;

(c) Kas locality: city of Kas and districts of Abram, Shattaya and Kailek.

10.4 Third visit

To continue its investigations, the Commission made a third visit in the second week of December 2004 to South Darfur, visiting the Kas locality (city of Kas and villages of Shattaya and Kailek) and questioned the citizens who had witnessed the events in the area, as well as members of the police force and members of the native administration.

11. Fundamental rights and freedoms under international law

Given that the mandate of the Commission is to investigate the facts surrounding alleged violations of human rights that may have been committed by armed groups in Darfur, it is necessary to begin by specifying — in general terms and without undue brevity — the basic rights and freedoms defined by international human rights law and by the principles of international humanitarian law relating to the purposes of the investigation.

11.1 Principles of international human rights law and of international humanitarian law[24]

The principles of international humanitarian law have taken shape and developed since the middle of the nineteenth century. International humanitarian law is concerned with practices in warfare and armed conflicts. The purposes of this branch of law include that of limiting the suffering and hardship of war on land, at sea and in the air. It is also concerned with the treatment of civilians in times of international armed conflict and non-international armed conflict. This branch of international law defines war crimes, crimes against humanity and grave violations arising from armed conflicts such as genocide, ethnic cleansing, the forcible transfer of populations, torture and extrajudicial executions. International human rights law

defines the meaning of fundamental rights relating to human freedom and security, and to political, civil, economic, social and cultural rights. For example, those rights include the right to life, the protection of the individual against torture, the right to organize, freedom of expression, thought, assembly and rights of minorities. International humanitarian law is associated with human rights law through the establishment of general principles including the right to life, the prevention of torture in all its forms and the right to freedom and to residence.

11.2 The four Geneva Conventions of 1949

It was stated above that international humanitarian law is concerned in general with protecting and improving the situation of sick and wounded military personnel in the field in the case of war and armed conflict. The four Geneva Conventions of 1949 and their two Protocols are the basis of such international law. For the purposes of this investigation, what concerns us is the fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War, and particularly internal armed conflict. Common article three of the four Geneva Conventions states:

> "In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum, the following provisions:
>
> (1) Persons taking no active part in the hostilities [...] shall [...] be treated humanely, without any adverse distinction founded on race, colour [or] religion [...].
>
> To this end, the following acts are [...] prohibited [...]:
>
> (a) violence to life and person, in particular murder of all kinds, [...] cruel treatment and torture;
>
> (b) taking of hostages;
>
> (c) outrages upon personal dignity, in particular humiliating and degrading treatment;
>
> (d) the passing of sentences and the carrying out of executions without previous judgement pronounced by a regularly constituted court [...]."

11.3 Cases of extrajudicial, arbitrary or summary executions

The Universal Declaration of Human Rights provides that "everyone has the right to life, liberty and security of person". The International Covenant on Civil and Political Rights states in article 6 that:

> "1. Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.
>
> "2. In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide. This penalty can only be carried out pursuant to a final judgement rendered by a competent court."

The right to life is one of the most important human rights and is the source from which the other rights stem. Despite this, the right to life is still violated on a wide scale in internal armed conflicts. In this case, it is necessary to take into account the Geneva Conventions (August 1949) and their two Additional Protocols of 1977, and particularly the four Conventions that are concerned with humanitarian protection in internal conflicts in a single country between governmental forces and any other armed forces of the population, whatever their nature, whether revolutionaries or rebels. This is set forth in the second Additional Protocol.

11.4 Crimes against humanity

The doctrine of crimes against humanity was developed by the Nuremberg and the Tokyo tribunals, and by the resolutions of the Security Council concerning the courts for Rwanda and Yugoslavia. Article 7 of the Statute of the International Criminal Tribunal specified the meaning and content of crimes against humanity. The importance of article 7 of the Statute of the International Criminal Court stems from the fact that it expresses the wish of the international community; delegations representing 160 States took part in the work of the Conference that approved the Statute. It is worth mentioning that the Government of the Sudan is a signatory to the Statute of the International Criminal Court.

The chapeau of paragraph 1 of article 7 prescribes as follows:

"For the purposes of this Statute, 'crime against humanity' means any of the following acts when committed as part of a widespread or systematic attack against any civilian population, with knowledge of the attack".

The main features of this text are that such acts:

(a) Do not require any connection or link with an armed conflict;

(b) Need not be committed for the purposes of discrimination;

(c) Require the existence of a widespread attack;

(d) The act, acts or attack are committed with evil intent.

We must note here that the lack of any condition requiring a linkage between crimes against humanity and armed conflict underlines the fact that such crimes may be committed in time of peace or civil conflict, just as they may be committed by Governments against their citizens. Moreover, the requirement that the occurrence of an attack or the commission of acts must be widespread necessarily means that the number of aggrieved parties or victims must be considerable and the term "systematic" means that the attack takes place, or the acts are committed, in a planned and coordinated manner. It is worth pointing out that the attack must be directed against a group of civilians.

The acts enumerated in article 7 are ordinary crimes even though, under the Statute of the International Criminal Court, they become crimes against humanity. The text added conditions for proving such acts and the elements constituting them. The Commission considers that some of the acts enumerated in article 7 are related to the subject matter of its investigations, namely:

(a) Murder (killing);

(b) Deportation or forcible transfer of population;

(c) Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity.

11.5 Murder

This crime comprises the following elements:

(a) The perpetrator kills one or more persons;

(b) The conduct of the perpetrator takes place in the context of a widespread or systematic attack against a group of civilians;

(c) The perpetrator must be aware that his actions form part of a widespread and systematic attack on a group of civilians.

11.6 Deportation or forcible transfer of population

The forcible deportation of population means measures intended to force members of a group to leave their homes in order to avoid an attack, a threat or ill-treatment. There is another opinion, namely that forcible transfer may constitute a crime of genocide if it takes place under inhumane conditions and is intended, wholly or in part, to destroy groups protected by the Convention on the Prevention and Punishment of the Crime of Genocide. The crime of forcible transfer is established by means of the following elements:

(a) If the perpetrator deports the victims or transfers them by force to another State or another place without a reason sanctioned by international law, provided that the transfer or expulsion is carried out with coercive force;

(b) If the place from which the victims are transferred is a lawful place of residence;

(c) If the action of the perpetrator in carrying out the forcible transfer is part of a widespread and systematic attack directed against civilians;

(d) If the perpetrator is aware that his conduct is, or is intended to be, part of a widespread and systematic attack directed against a group of civilians.

11.7 Rape

It is worth noting that article 7 of the Rome Statute enlarged the definition of the crime of rape in criminal law to include acts of sexual slavery, forced pregnancy and prostitution. In accordance with this enlarged definition, rape becomes a crime against humanity. However the crime is established in accordance with this enlarged definition, the following elements have to be proved:

(a) The perpetrator attacks the body of the victim by introducing his penis into that person's vagina or anus;

(b) The sexual attack was committed by force, threat or coercion.

11.8 Genocide

The Convention on the Prevention and Punishment of the Crime of Genocide came into force on 12 January 1951 and the Sudan acceded to it thereafter. Article 1 of the Convention states that genocide is a crime under international law. The crime is defined in article 2 which provides:

"... genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

(a) Killing members of the group;

(b) Causing serious bodily or mental harm to members of the group;

(c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;

(d) Imposing measures intended to prevent births within the group;

(e) Forcibly transferring children of the group to another group."

It is worth noting that this definition was accepted in the Rome Statute of the International Criminal Court and was incorporated in article 7 thereof. Thus the crime of genocide has become one of the leading principles of international law.

The terms used in defining the crime of genocide are very clear and specify three elements that must be present and established for the perpetration of the crime, namely:

(a) Any act or acts defined in article 2, paragraphs (a) to (c), of the Genocide Convention quoted above must have been committed;

(b) The acts must have been committed against any of the groups enjoying the protection of the Convention, namely national, ethnical, racial or religious groups;

(c) The acts must have been committed with the intention of destroying the group either in whole or in part.

What distinguishes the crime of genocide from other crimes such as murder is that the crime of genocide requires the element of criminal intent to destroy one of the said groups. If the element of criminal intent is lacking the crime of genocide is not established, however heinous and repugnant the acts committed may have been, and it is not a simple matter to prove criminal intent.

The existence of evil intent as one element of the crime of genocide is an important matter with regard to proving the crime and determining the legal responsibility arising from its commission. In most cases, evil intent is established by means of indirect or circumstantial evidence.

The requirement to prove criminal intent to commit the crime of genocide makes proof of the commission of the crime a difficult matter.

There is another impediment raised by the definition of the crime of genocide namely the provision of protection to specific groups (protected groups). It is therefore not possible to add any other group such as political opposition groups because the acts constituting the crime of genocide are defined in article 2 in the form of a general prohibition. The acts are not defined by analogy, with other acts being included on a discretionary and jurisprudential basis. There is another matter, namely that the protected group must be a cohesive group and not a disparate one. Accordingly, the business of determining whether the victims of genocide belong to a racial, national, ethnical or religious group is no simple matter.

In 1978, one of the human rights bodies considered the concept of genocide in order to clarify its legal definition. Among the points noted was the fact that the term "race" denotes a group of people with shared distinctive characteristics that are inherited from generation to generation. At the same time, the term "ethnicity" means more than the term "race". Ethnicity is something that links a group of people in terms of habits and language in addition to the link of race. It was also noted that an ethnic group is a component of a nationality. Such groups are not sufficiently distinguished from one another because the differences between them are too few. In fact, it is a difficult matter to distinguish between racial and ethnic groups.

The third condition in the definition which the perpetrator of the crime of genocide must have in mind is the destruction, either wholly or in part, of one of the said groups. This condition raises a number of questions including for example the scope of partial destruction. The definition says nothing about the determination of such scope and leaves the door wide open to interpretation.

Genocide is a heinous crime and, that being so, it is inevitable that some people should be tempted, in order to elicit sympathy for themselves and to provoke the condemnation of those who are accused of that crime, to allege they have been victims of genocide, even if the accusation has not been proved.

12. Designation of events in the light of the principles of international law

In view of the foregoing account of facts and events and the review of the principles of law relevant to this inquiry, it was necessary to qualify the events in the light of the principles of international law in order to enable the Commission to reach conclusions as to whether violations of human rights occurred in the Darfur states, as the following paragraphs make clear:

13. Genocide

The elements comprising genocide as set forth in article 2 of the Convention on the Prevention and Punishment of the Crime of Genocide have already been identified (para. 8.11 above). The significance of that definition can now be explained in the following questions which have to be answered in order to determine whether there were violations:

(a) Was any ethnical, religious or racial group killed in the Darfur states, or was serious bodily or mental harm caused to members of such groups, or were conditions of life calculated to bring about their physical destruction in whole or in part deliberately inflicted on them, or were measures imposed that prevented births within the group or were children forcibly transferred to another group?

(b) If the answer to the foregoing is in the affirmative, were any of those acts committed with evil intent?

13.1 Allegations of genocide were made by various people and may briefly be enumerated as follows:

After the armed conflict in the Darfur states had intensified, there was talk of ethnic cleansing in those States but there was no indication at that time that the crime of genocide had been committed. The allegation that acts of genocide had

been committed came after there were widespread accusations of ethnic cleansing which permeated world public opinion.

The first reference to the possibility of the occurrence of ethnic cleansing in Darfur came during the panel discussion at the Holocaust Memorial Museum in Washington, D.C. held on 20 February 2004 under the title "Western Sudan in Flames". The participants in the discussion included Adotei Akwei from Amnesty International, John Prendergast from the International Crisis Group and Jemera Rone, a researcher and counsel on the Sudan for Human Rights Watch.[20] It was then referred to in statements by a number of United Nations officials such as Mr. Mukesh Kapila, the United Nations Resident Representative in the Sudan at that time, who caused a major outcry in the media on 19 March 2004 when he told the BBC that the Darfur region was experiencing the worst humanitarian disaster in the world and that over a million people had been victims of ethnic cleansing.[21] He was followed by Mr. Jan Egeland, Under-Secretary-General of the United Nations for Humanitarian Affairs, who on 2 April 2004 described what was happening in Darfur as ethnic cleansing.[21] There was then a succession of such descriptions when the United States House of Representatives received the statement of Mr. Egeland who declared on 22 April that genocide was taking place in Darfur. A hearing was convened on 7 March 2004 of the Committee on International Relations under the title "Ethnic cleansing in Darfur: a new front opens in Sudan's bloody war", in which the Acting Assistant Secretary of State for African Affairs, Mr. Charles R. Snyder, testified to the Committee. He was followed by a number of officials from international voluntary organizations including Mr. Roger P. Winter of USAID, John Prendergast from the International Crisis Group, Mr. Bob Laprade from Save the Children and Mr. Omer Gamr Al-Din Ismail from the Darfur Peace and Development Organization. The speakers were intent on exaggerating what was happening in Darfur and overstating its connection with the genocide and ethnic cleansing that had occurred in Rwanda 20 years before.[25]

This was reported by the media throughout the world on the basis of fallacious and contradictory information as we explained in paragraph 7.3. The most prominent article was one written jointly by two members of the United States Senate Mr. Mike DeWine and Mr. John McCain in *The Washington Post* on 23 June 2004.[26] The article was based on information that was at variance with the statements made by the State Department on the following day and also with a report issued by the Sudan Human Rights Group after an investigation made in Darfur by a legal commission headed by a lawyer[27] which concluded that 12,000 people had been killed.

This campaign, and pressure from the Secretary of State, obliged the State Department to send a group to investigate the facts surrounding the allegation of genocide in Darfur. The activities of the group were confined to a visit to refugee camps in Chad and the Secretary of State announced to the Senate Committee on Foreign Relations on 9 September 2004 that genocide was taking place in Darfur and that the Government of the Sudan and the Janjaweed were responsible.[28] On 16 October 2004, the United States House of Representatives went one step further with the publication of the Comprehensive Peace in Sudan Act which characterized what was happening in Darfur as genocide and called on the President of the United States to impose sanctions on the Government of the Sudan.[28]

Despite this organized campaign, the context of which we have already explained, we note that the Secretary-General of the United Nations and the Secretary of State of the United States, following their visit to Darfur and their discussions with the Government on the Darfur crisis,[29] referred to human rights violations but they failed entirely to mention crimes against humanity and the Secretary of State declared that he was in agreement with the opinion of his legal advisers that there had been no genocide in Darfur. Subsequently, at a hearing of the United States House of Representatives, he referred diffidently to the fact that the House considered that there had been crimes against humanity, saying that others held a different opinion.

13.2 Genocide is a heinous and repugnant crime rejected by right thinking people and prohibited by law. Accordingly, any allegation that genocide has been committed arouses anger and unites people in support of anyone claiming to have been a victim of such a crime. It is perhaps natural for such victims, or those who support them, to overstate the number of victims in order to establish one of the elements of the crime as defined. The Commission investigated this matter in order to determine the true number of victims of the events in Darfur but that was not easy, particularly as the information circulated by the mass media and by certain international human rights organizations gave the total number of people killed in the events in Darfur as 70,000 on the basis of a report by the World Health Organization.[30] However, the Minister for Foreign Affairs of the Sudan stated that the number was no higher than 5,000, although USAID alleged that as many as 30,000 people had been killed and that the number might be as high as 320,000 by the beginning of September 2004.[20] In its report dated 6 July 2004, the United States organization Human Rights Watch put the number of killed at 802.[22] This is clearly inconsistent and reflects the random nature of the allegations and conjectures.

It is worth mentioning that, on 15 October 2004, the World Health Organization (WHO) announced that it had carried out a health survey showing that mortality in the Darfur states was between 35,000 and 70,000.[30] The Government of the Sudan did not agree with the publication and made a protest about it. WHO subsequently explained that the survey on which it had relied in its report included two of the Darfur states and had been confined solely to the camps for displaced persons.[31]

The survey made by WHO concerned citizens in the camps run by the Government of the Sudan, the United Nations and non-governmental organizations. Those people were not subjected either intentionally or unintentionally to living conditions intended to destroy them either wholly or in part. The WHO estimates of between 35,000 and 70,000 were based on assumptions and estimates which depended on the Organization's methods of work, including the early warning system for the spread of diseases, and did not accurately reflect actual mortality. Consequently, the enormous margin between the two estimates was due to the fact that it was hypothetical and based on changing elements.

As we have explained, the definition of the crime of genocide says nothing about the determination of the scope of partial destruction of any of the protected groups and consequently disagreement as to the number of those partially destroyed in Darfur raises doubt as to whether one of the most important elements of the crime was actually present.

13.3 The Commission questioned a considerable number of Darfurians, its primary objective being to establish the number of people killed in the events, but it received no satisfactory answer or fully reliable testimony. For example, the memorandum of the Committee of Darfur Lawyers,[32] which was submitted to the Commission, stated that over 53 people had been killed although it was explained in the same memorandum that the number of people killed in the Deleig area in West Darfur had not been determined. Some of the deputies of Darfur in the National Assembly stated that 127 people had been killed in the Deleig area[33] and Dr. Hassan Hud, in testimony to the Commission, stated that the number of people killed in the city of Kuttum was 40.[34] At the same time, Dr. Hussein Adam Al-Hajj stated in an article published in the Internet magazine *Sudanile* that 471 people had been killed[35] (see list of violations in para. 12.2).

13.4 On the other hand, the Government of the Sudan categorically denies that what occurred in Darfur constituted genocide and that instances of collective or individual killing had taken place in which all parties to the conflict had been involved.

13.5 Historical precedents of genocide

Before examining the events and facts, and expressing an opinion, it is incumbent on the Commission to look into the historical precedents of genocide:

(a) It is clear to us from what happened to the Armenians in Turkey during the First World War that the aim of the planned policy of the State was to transfer the Armenians for security reasons to an area it had determined and that, in the process, the State did not provide for the protection of that non-Muslim minority, as a result of which hundreds of thousands of people died. We wish to draw attention to this as a case of killing resulting from the implementation of State policy.[36]

(b) Everybody knows of the Holocaust in Nazi Germany. The purpose of the policy of the State was to kill the Jews as an ethnic group. At that time the term "genocide" was not known.[36]

(c) In Cambodia, the policy of the State was announced through the various information media and was to eliminate everybody who was classified as an enemy of the State and 50,000 people were executed, people were tortured and transported to collective villages and over a million of them were killed.[36]

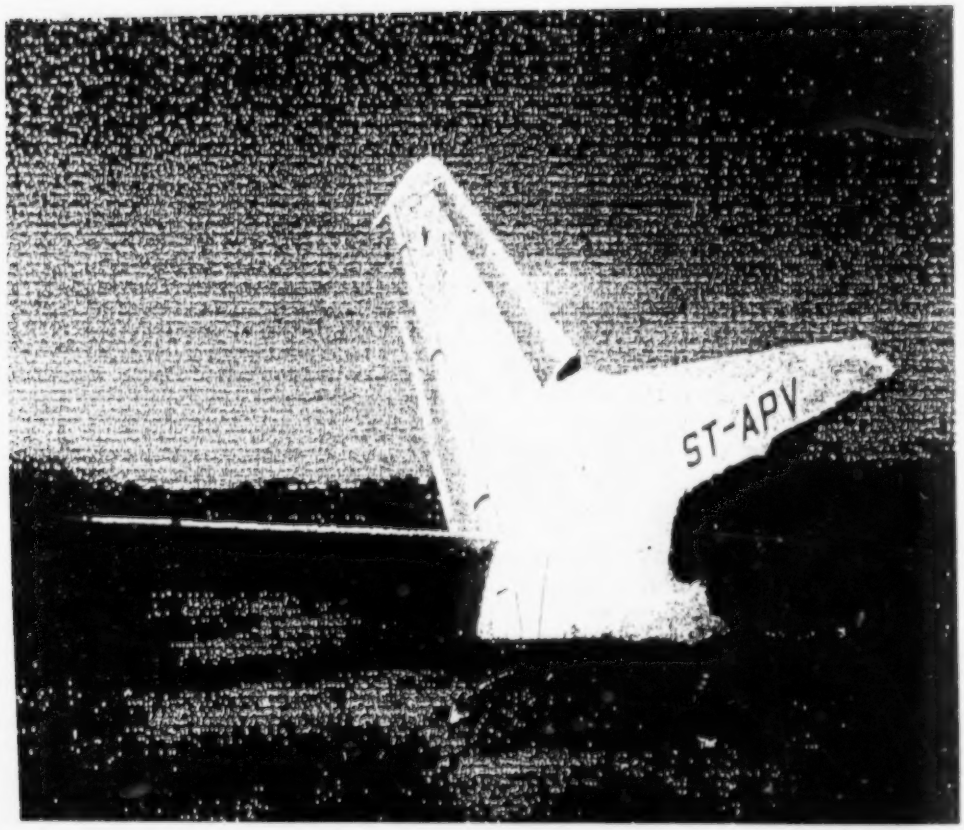
(d) In Rwanda, with the world looking on and in the presence of international peacekeeping forces, the President of the Republic of Rwanda made an announcement urging the majority Hutus to kill, and indeed to exterminate, the minority from the Tutsi tribe and over a million people whose only fault was that they were of a different ethnicity were exterminated in the streets and public squares. The Organization of African Unity called for an inquiry to be held into those events which was published on 7 July 2000. The report severely criticized the Government of the United States for its negative role during those events but also criticized United States officials for hampering any measure taken by the Security Council in that connection. The crime of genocide had begun to raise its head.[36]

(e) In Bosnia, where the term "ethnic cleansing" was used for the first time, the declared policy of the Government was to deport the Croats and Muslims from any territory inhabited by Serbs so that Serbian soil should be free from any other nationality or anyone professing a different religion.[36]

13.6 We explained in the early part of this document that tribal disputes and controversy over resources together with other factors were and remain the predominant feature of the relationships between tribal groups in the Darfur states. The present dispute in Darfur, before it was politicized, is no exception to that. The killing and physical injury that occurred are no different from what took place historically. Even though the dispute is on a larger scale and the objectives of the combatants on either side, as was comprehensively made clear to us, are to annihilate the other side on religious, racial, ethnic or tribal grounds, the bottom line is that the dispute has largely been a dispute over resources.

13.7 It has been established that the attacks of the armed opposition against the garrisons of the armed forces and police stations, particularly after the attacks on the cities of El Fasher and Kuttum, were the first spark that ignited the fire of war and conflict.[37] Those attacks targeted the armed forces and the police, and the military measures taken by the Government were a response to that. It is worth pointing out that the armed groups announced that their attacks against the regular forces had political objectives which went beyond the traditional problems of Darfur (see sections 3 and 4 above).

13.8 To conclude its investigation of the allegations, the Commission visited most of the cities and villages in which armed conflict had taken place to verify whether there were mass graves or individual graves in large numbers that might prove that the crime of genocide had been committed. The Commission also questioned witnesses from those areas under oath.[38] The Commission concluded that the allegation that there were mass graves in which large numbers of people had been buried were untrue although it found newly dug individual graves which were stated by people from Kailek, Shattaya, Tanku, Deleig and Labdu who were questioned by the Commission to be those of people killed in the events, including a considerable number of policemen who had challenged the attackers who were members of Arab and other tribes.[39] It is worth mentioning that, according to testimony from the leaders of the Bargad tribe, the graves in Labdu in South Darfur state contained the remains of members of the tribe who had been liquidated by the armed opposition.[40]



View of part of the destruction at El Fasher airport

During its visit to West Darfur, the Commission was not aware of any mass graves although it saw a number of burned villages.[39]

13.9 In their testimony, witnesses from the Kas locality said that a group of armed Arabs had besieged the village of Kailek after some people fleeing from attacks by the same group on other villages in the administrative unit of Shattaya — which included the villages of Shattaya, Muwanga, Tadara, Aybo, Kurt and Abram — had gathered there. As a result of the siege, a number of people of various ages had been killed. The Commission investigated this matter and, because of its importance, made two visits to the scene of the event in the Kas locality. The first visit was in September 2004 during which the Commission heard testimony from Shartai Muhammad Muhammad Sarraj from the village of Shattaya and from a teacher called Adam Ahmad Shawqar from the village of Abram. During the second visit, which took place in December 2004, the Commission heard testimony from Adam Muhammad Adam Tillah from the village of Kurt, Omar Ibrahim Abd Al-Karim from the village of Tokro and Police Lieutenant Al-Tijani Ali Al-Abbas. After making a wide-ranging investigation and evaluating the evidence, the Commission concluded that the area had been the scene of continual tribal conflicts since the second half of the 1990s. The situation had continued to deteriorate in a number of ways, with plunder and highway robbery becoming commonplace, until the event that the Commission is investigating, which began with the murder of three members of Arab tribes in the area. After that, a peace settlement was reached but the perpetrators from the Fur tribe and the local authorities were unable to abide by its terms. This led to attacks by armed groups from the Arab tribes (the Bani Halba and the Salamat) on a number of villages in the area inhabited by the Fur, and to highway robbery, particularly on the road between the cities of Kas and Niyala. The police force, which was not a party to the dispute, struggled to repel the attackers and enable the members of the population to move to secure areas. But the police met violent opposition from the armed Arab groups. This resulted in the death of 22 policemen whose graves the Commission visited. It was also clear to the Commission that Ahmad Angabo, the Commissioner of Kas, displayed a poor appreciation of the situation when he prevented people from moving out of the area of the events because, in the estimation of some witnesses, he wanted to keep people settled in the area and not let them migrate to Kas where a large number of displaced persons had gone earlier. Some witnesses did in fact affirm that the Commissioner of Kas was responsible for preventing people from leaving the area.[37, 39]

On visiting the cemeteries at Kailek and Shattaya, the Commission saw about 50 graves of policemen and civilians, both adults and children, who had been killed. This was in spite of the allegation by one witness, Police Corporal Adam Al-Tahir Ahmad, that about 300 people had been killed and the allegation of Police Sargeant Ahmad Abdullah Abd Al-Rasul that the number of killed was about 150.

View of the destruction in the area of Shattaya, Kas locality

The Commission concluded that bloodshed had occurred in the area enabling armed Arab groups to commit highway robbery against civilians fleeing from the site of the incidents and that, as a result, about 50 people from the Fur tribe and 3 people from Arab tribes in the area had been killed together with 22 policemen. The Commission considers that there was a siege of civilians lasting several days after which they were taken out of the area in government vehicles to the Kas and Niyala camps for displaced persons, that the events took place within the framework of tribal conflicts and that the police force was unable to maintain order in the area. Since it was established that the siege did not last so long as to have an impact on the living conditions of the civilians such as to result in their death or destruction, either wholly or in part, it follows that one of the elements of the crime of genocide was not proved. It was proved to us that the police were able to break up the siege before it had an impact on the living conditions of the civilians and no other testimony was provided alleging that any village or town in Darfur had been besieged deliberately in order to subject the inhabitants to living conditions leading to their destruction, either wholly or in part.

View of a burnt village in the Wadi Saleh area

13.10 Evidence was provided to the Commission proving that many villages in the Darfur states, particularly in West Darfur, had been burnt. However, no evidence was produced to the Commission proving that any person had died as a result of fire in those areas.

13.11 In view of the foregoing, the Commission considers that the killings in the three Darfur states did not constitute genocide nor did they amount to large-scale killing. Moreover, it was not proved to us that any racial, ethnic or religious group in the Darfur states had been subjected to living conditions that led to the destruction of a substantial number of them.

13.12 It is necessary to consider whether the killings that did occur were evidence of the perpetration of genocide. This necessarily requires examination of the element of evil intent. We have already explained that proof of evil intent can be provided by circumstantial or indirect evidence. The historical precedents (see para. 13.5) show that evil intent was inferred from governmental decisions and the policies announced by the Government. It was proved to the Commission that the attacks made by the Government were a reaction to attacks by the armed opposition and that the reaction was not the result of a pre-established plan or policy. On studying the deliberations of the security committees of the Darfur states, the Commission did not find any decisions or directives to the regular forces relating to the annihilation or killing of large numbers of any racial, religious or ethnic group.

13.13 It is incumbent on us to mention once again that what distinguishes the bloody events in the Sudan from what occurred in the precedents to which we have already referred was that the Government of the Sudan did not embark on armed operations in order to implement a specific policy as was the case in the other examples; its military operations were a reaction to attacks made on the regular forces. Moreover, the Government attempted on more than 10 occasions to resolve the matter peacefully (see para. 4.4). A party to a dispute that inclines towards peace cannot, of necessity, harbour the intention of annihilating the other party.

13.14 In view of the foregoing, the Commission considers that the crime of genocide has not been proved.

13.15 The opinion reached by the Commission is supported and corroborated by a number of opinions emanating from the international community. Some of those opinions are set out below even though they were not based on evidence or on legal depositions:

(a) In a statement published by the newspaper *Al-Bayan* (United Arab Emirates) on 25 September 2004, President Obasanjo, President of Nigeria and Chairman of the African Union, rejected the description of the killing in Darfur as genocide in the absence of proof of the involvement of the Government of the Sudan in a specific act of racial genocide. He added: "We must be careful to use words appropriately and until such time as we have evidence that the Government of the Sudan took the decision and gave instructions to its fighters to carry out the mass slaughter of people, in our view that does not amount to genocide: there is conflict and there is violence but it cannot be described as genocide".[41] President Obasanjo affirmed his position in statements made to the United States television channel CNN on 3 December 2004 at the end of his visit to Washington, D.C. when he rejected the description of what was happening in Darfur as genocide.[42] It is astonishing that Mr. Ruud Lubbers, the United Nations High Commissioner for

Refugees, should state that it was not just Washington, D.C. that described the events in Darfur as genocide, since that was also the view of the Chairman of the African Union, President Obasanjo, and the Security Council.[43] This is at variance with the statement by President Obasanjo and with the resolutions of the Security Council.

(b) A number of European research workers in the field of humanitarian affairs have set about refuting claims of genocide and ethnic cleansing. One of these is Mr. Marc Lavergne who is a member of the French National Centre for Scientific Research (*Centre national de la recherche scientifique*) in Paris, a specialist on the Sudan.[44] A report in *The Times* (London) of 26 July 2004 stated that the army is protecting civilians and the same applies to the police force. *The Times* also mentioned that the bearing of arms in Darfur is an everyday occurrence like the carrying of handbags by women in Oxford Street. It went on to say that it is a difficult matter to collect weapons in an area of 196,404 square miles in which there are no paved roads and that, in the city of Niyala in South Darfur, 12 members of the Janjaweed (armed Arab militias) had been put on trial for their involvement in crimes ranging from theft, through rape to murder. The Governor of North Darfur had informed *The Times* that the police force, the army and the security forces were waging a campaign against the so-called Janjaweed. During searches conducted by helicopter 400 Janjaweed militiamen had been arrested.[45]

(c) The highly regarded British medical journal *The Lancet* published a scientific medical study carried out by a French team led by Evelyn Depoortère, head of the French medical survey group *Epicentre* and experts of *Médecins sans frontières* (Doctors without Borders). The report covered the areas of Zalingey, Morni, Niertiti and Geneina and it stated that the events taking place in the Darfur states were a demographic disaster but did not amount to genocide. Between April and July 2004 the group that carried out the study interviewed 3,000 families.[46]

(d) On 3 October 2004 *The Observer* (United Kingdom) quoted international relief workers in Darfur as saying that the United States of America had exaggerated the scale of the humanitarian tragedy in Darfur and that the United States Administration had submitted a biased report in order to justify its desire for regime change. A report issued by the United Nations differed from the account given of the scale of the food crisis by the United States Administration. The newspaper also quoted one of the relief workers as saying: "It suited various Governments to talk it all up, but they don't seem to have thought about the consequences. I have no idea what Colin Powell's game is, but to call it genocide and then effectively say, 'Oh, shucks, but you are not going to do anything about that genocide' undermines the very word 'genocide'."[47] It was stated in the same article that aid workers were puzzled that Darfur had become the focus of such attention at a time when there were crises of similar magnitude in both northern Uganda and the eastern Congo.[48] President Yoweri Museveni of Uganda had sharply criticized the statement by Mr. Jan Egeland, United Nations Under-Secretary-General for Humanitarian Affairs, who had urged the international community to focus on northern Uganda where some 2 million people lived in camps under inhumane conditions as a result of the war between the Ugandan Government and the Lords Resistance Army.[49]

(e) A report by the Arab Doctors Union which visited Darfur between 13 and 22 August 2004[50] also denied reports of ethnic cleansing, genocide and systematic rape in Darfur, saying that these were political accusations for which there was no

scientific evidence and that they had no factual basis. The report of the delegation of the Organization of the Islamic Conference, which visited Darfur from 5 to 8 June 2004, stated that the mission had found no evidence of the existence of "the worst humanitarian situation in the world" or any point of comparison at all with the genocide and ethnic cleansing which had been recently and reliably documented in Rwanda in 1994.[50] A group of members of Arab professional unions who visited Darfur came to the same conclusion.[51]

(f) Mr. Akbar Muhammad, Special Representative of the leader of the Nation of Islam, Mr. Louis Farrakhan, who visited the Sudan in October 2004 as part of a delegation of the Give Peace a Chance Coalition to study the situation in Darfur, said in a press conference convened by the delegation of the Coalition after its return to Washington, D.C. that the delegation had just returned from Darfur where it had visited the camps and had met officials, the opposition, and staff members of humanitarian organizations and had found nothing to justify the description by the United States Administration of what was happening in Darfur as genocide. He said that some activists in the hostile campaign against the Sudan had contacted Mr. Louis Farrakhan to recruit him to their campaign against the Sudan but he had rejected that and suggested that a delegation should be sent to investigate the facts, adding that the cause of the Sudan had been adopted by groups pursuing their own agenda. The same groups had made allegations of slavery in the Sudan but those fabrications had been disproved and both British and United States newspapers had denied them. He said that the campaign directed against the Sudan was attempting, in order to arouse the historic sensitivities of African Americans, to portray events in Darfur as a struggle between Arabs and Africans.[52]

(g) On 27 November 2004 the newspaper *Alwan* (Saudi Arabia) published details of a Jewish plan led by Jewish World Watch (*World Jewish Chronicle*) to launch a second campaign to support the committee for monitoring Jewish temples worldwide in order to mobilize support and funding for the programme of the Sudan relief fund for the victims of ethnic cleansing.[53] The first campaign had been launched in February 2004 by the Holocaust Memorial Museum in Washington, D.C. with the participation of Jemera Rone, a specialist researcher on the Sudan from the Africa Section of Human Rights Watch.[20]

13.16 The eradication of the alleged number of people would necessarily require mass graves which would be obvious to an observer. The Commission looked into this matter and found no trace of such evidence. Accusations concerning the existence of mass graves in the area of Labdu (South Darfur) have been circulating recently and the leaders of the Bargad tribe in that area stated that the graves contained the remains of members of the tribe who had been killed by the insurgency.[40]

13.17 Viewing the allegations of genocide in the light of the history of disputes in Darfur (sections 15 and 16) we find that the number of people killed and displaced in the circumstances of the present insurgency does not amount to genocide. While the Commission was in Darfur, an armed dispute broke out between two tribes, the Rizaigat and the Maalia, both of which are of Arab stock, in which 37 people were killed. This is something that will continue in Darfur until a political solution is found to satisfy the demands of the various parties and putting an end, once and for all, to the reasons for the conflicts.

13.18 Some people think that the crime of genocide may be the consequence of different acts. For example, if ethnic cleansing, forcible transfer and rape all occur on a wide scale, this may result in genocide. The Commission does not dissent from this view although, when it discussed and looked into the events, it was established that the accusation of wide-scale and deliberate rape was not substantiated just as, in terms of the agreed principles, there was no forcible transfer or ethnic cleansing.

13.19 Despite the fact that grave violations of human rights were committed by all parties in Darfur, the Commission decided, on the basis of the information provided to it and in application of the international criteria and historical precedents, that the crime of genocide, the elements of which were defined above, was not committed.

13.20 There are a number of questions that are worth noting as they relate to the circumstances. They include the following:

(a) Most members of the Sudanese armed forces, particularly the infantry, belong to the various Darfur tribes,[12,20] and it is hardly to be expected that the members of those forces would obey orders to massacre their own people; in any case, there is no record of any instances of insubordination in the Sudanese army in the past.

(b) Members of the tribes which are alleged to have been subjected to genocide in Darfur took part at all levels of the forces of the federal Government and of the states and they continue to hold senior leadership posts in all the organs of the State. Since the tribe, in the Sudan as a whole and Darfur in particular, has been the principal source of political support, it is inconceivable that the members of any tribe that had been targeted would agree to remain in their Government posts.

(c) The governmental delegations to the negotiations with the armed movements include a number of members of tribes that are alleged to have been subjected to genocide. For a society based on tribal affiliation, that would be illogical and contrary to good sense. For example, the members of the governmental delegation to the talks in Addis Ababa belonged to various races and were from Darfur, except the head of the delegation.

(d) All the Darfur tribes are firmly convinced that it would be inconceivable for any of them to massacre another tribe because of the reality of peaceful coexistence between them, their shared interests and the interrelationship through marriage between the tribes over many centuries.[12] This has been affirmed by the preambular provisions of the resolutions of all the peace conferences that have been convened in Darfur.[54]

(e) The displaced persons seeking security and humanitarian assistance moved to the population centres under government authority. Those that took refuge in Chad did so either because they lived a long way away from such population centres, or because the roads were dangerous, or because there was no transport to take them to those centres. It is logically inconceivable that members of the population would seek refuge with people who entertained a wish to exterminate them or subject them to ethnic cleansing. Accordingly, the camps for displaced persons house members of various Darfur tribes belonging to different races (Abu Shawk camp, Mawsih camp).[55]

14. 1949 Geneva Conventions (common article 3) — bombing and endangerment of civilians

The Darfur Lawyers Committee submitted a memorandum to the Commission alleging that the Sudanese armed forces had bombed the area of Habila in West Darfur and the village of Umm Shujairah in South Darfur, injuring a number of civilians in those places. An allegation was also made in a publication issued by Human Rights Watch on 4 July 2004 with respect to the bombing of the villages of Tunfuka, Urum, Tulus, Andanga and Hajar Baydha.[56]

14.1 In view of the accusations, the Commission questioned the Western Region Command of the Sudanese armed forces in El Fasher and interviewed representatives from the leaders of the Sudanese armed forces. Their testimony can be summarized as follows:

(a) The operations that took place were part of a war between the trained regular forces and elements of the armed opposition who hid in the villages and launched attacks from them on the armed forces. They also targeted civilians, public facilities, hospitals and relief convoys.

(b) The armed forces do not use fighter aircraft or helicopters except in accordance with military regulations, namely:

(i) After study of the situation and the target; the decision is taken after evaluation of the military requirements, subject to the imperative that civilians are not targeted by military operations;

(ii) If aircraft are used in accordance with the regulations, the least possible force is used causing the fewest possible civilian casualties;

(iii) The order to use aircraft is subject to cost considerations; an attack cannot be made on a village containing a small target by aircraft, which are expensive to use;

(iv) The decision to attack any area and to use particular weapons is taken by the General Commander, the Chief of Staff and the commanders in the areas of operations; the operational commander prepares his plan which is approved by the General Command but, in the last analysis, it is the area commander who is entitled to take the decision to attack in day-to-day operations in the field.

14.2 Despite this, the armed forces acknowledge that a small number of errors were made leading to injuries to persons and damage to property in Habila (West Darfur), Umm Gozin and Tulu (North Darfur) and Wadd Hijam (South Darfur). They point out that it was extremely difficult to distinguish between places where armed people were present and places where there were civilians.

14.3 It was reported that, when errors were made, an investigation was carried out immediately, an inventory of the damage was drawn up, compensation was paid for damage to property and blood money was paid directly to the legal heirs of the victims for loss of life.[57]

14.4 Common article 3 of the Geneva Conventions makes it mandatory for the parties to an armed conflict to refrain from violence to the life and person of civilians, particularly murder of all kinds. As the armed forces acknowledged that civilians were killed during attacks on positions in which elements of the armed opposition were hiding, it follows that they were in violation of the said article. The

Commission considers that the payments made on the grounds that the death rate was low were not legally acceptable but that the armed forces took the correct action in investigating the bombing that had been carried out in error and in compensating the families of the victims and those who had been injured.

14.5 The accusation against the armed forces stated that they had called on the assistance of the Popular Defence Forces. The armed forces acknowledged that they had made use of the Popular Defence Forces and had called on them on the orders of the general commander of the Popular Defence Forces. This is in accordance with the Popular Defence Forces Act. The armed forces stated that they had trained and armed the Popular Defence Forces. In view of such testimony the Commission considers that any error made by the Popular Defence Forces with respect to civilians is the responsibility of the armed forces.

15. Killing

Several parties raised the accusation that the crime of killing had been committed against civilians during the armed conflict in Darfur. For example, the accusation was made by the United States organization Human Rights Watch, by Amnesty International, by the Ministry of Justice of the Sudan and by some citizens of Darfur such as Dr. Hassan Hud and Sheikh Hamad Abdullah of Kuttum and the writer Dr. Hussein Adam Al-Hajj, the report of the armed forces of the Sudan dated 8 June 2004, the Darfur Lawyers Committee and the points raised by the official of the United States organization Save the Children to the United States House of Representatives.

It is clear from the above that the Government of the Sudan is represented in the bodies which, as already mentioned, acknowledge that crimes of killing have occurred. Furthermore, the Commission made it clear during its discussion of the crime of genocide that many killings have been committed in all three Darfur states during the armed conflict between the Government and the various armed parties, or between the armed parties themselves. The Commission saw for itself in the three Darfur states the graves of people killed in the armed conflict in Darfur. However, as it has previously mentioned, the Commission was unable to make a reliable assessment of the number of people killed.

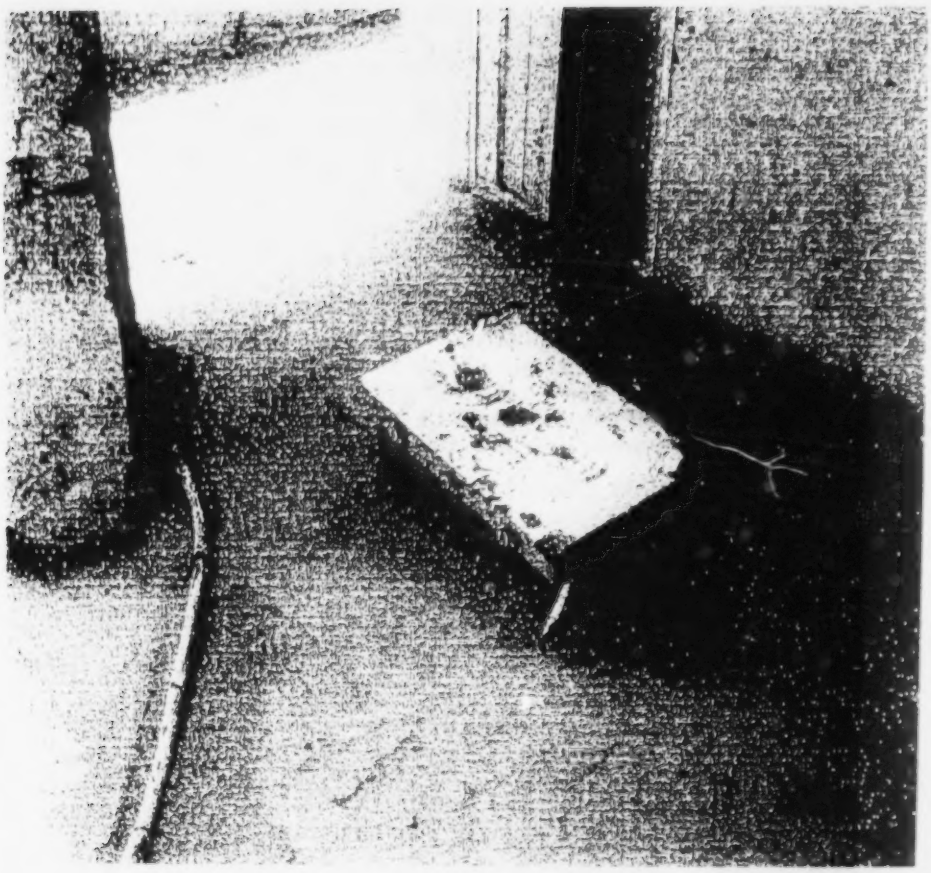
15.1 Murder is a crime punishable under the Penal Code of the Sudan and of other countries although murder becomes a crime against humanity if certain elements which were identified earlier are present, for example, if the acts of the perpetrator or perpetrators take place as part of a wide-scale or systematic attack directed against any group of civilians and if the perpetrator or perpetrators are aware that their actions or behaviour constitute part of such a wide-scale systematic attack on a group of civilians. What distinguishes this crime from the crime of genocide is that the latter denotes the killing of one or more protected groups namely ethnic, racial, religious or national groups.

It is incumbent on the Commission to examine the evidence that has been submitted to it to see whether the attacks that were made on numerous occasions during the events in Darfur were systematic and widespread and made by the Government of the Sudan against any armed group, or by any armed group against the Government of the Sudan, or between armed groups.

15.2 The Commission visited all the states of Darfur in order to investigate the facts surrounding the events and questioned individuals, groups and responsible officials in the governments of the various States. In North Darfur, the Commission visited Kuttum, Meleit and El Fasher localities. In Kuttum locality, which is to the north of El Fasher and has a population of about 200,000 including 33,000 in the city of Kuttum, witnesses testified under oath that, on 1 July 2003, elements of the armed opposition attacked the town, killing a number of members of the regular forces and civilians, demolishing the army garrison building and the police headquarters and looting Kuttum market. It was also proved to the Commission that 18 officers and men of the armed forces and three civilians were killed. This attack was followed by another on 5 August 2003 which witnesses under oath testified to have been carried out by an armed group known as the "Janjaweed". Twenty-four people were killed as a result of the attack and others wounded, and shops in Kuttum market were looted and burned. In the villages in the area surrounding Kuttum, a man and a woman were killed in Fatabirno, 6 others in Amr Allah and 12 in Kadakol. The Commission made a photographic record of the damage.[38] It was clear to the Commission from the testimony that the attack in both cases was on a wide scale and was premeditated.

15.3 In Meleit locality, which has a population of about 206,000 most of them belonging to the Burti, the Maidoub and the Zayadiya tribes and engaged in agriculture, stockraising and cross-border trade, the Commission received evidence from witnesses under oath that the armed opposition had attacked the town of Meleit on 11 May 2003 as a result of which 11 members of the regular forces, two civilians and the director of the customs station in the district were killed. The garrison building of the armed forces was destroyed and the goods and vehicles at the customs station were plundered. The armed forces counter-attacked and schools and health units in various parts of Meleit locality were destroyed.

After the destruction of the police headquarters in Kuttum



View of the remains of the strongroom of the Meleit customs station after it was plundered and destroyed

15.4 The Commission investigated the events in El Fasher locality, hearing more than 15 witnesses who testified under oath. It also visited the Tawila district, where it found that armed opposition forces had attacked Tawila on 21 July 2003 and 6 December 2003, with the result that two members of the police force and two civilians were killed. In addition, several Government units were looted and destroyed. On 27 February 2004 the armed forces, backed by Popular Defence Forces, went into action and carried out military operations in which 13 citizens were killed in the Tawila district, 9 of them near the village of Gelli.

15.5 The Commission heard witnesses, including both members of the armed forces and civilians, whose testimony was given under oath. The witnesses testified that in an attack conducted by the armed opposition on the city of El Fasher on 25 April 2003, 72 officers and soldiers of the armed forces were killed and 32 soldiers were lost. That attack was the spark that ignited the large-scale armed conflict among all the parties.

Those were the findings in North Darfur state.

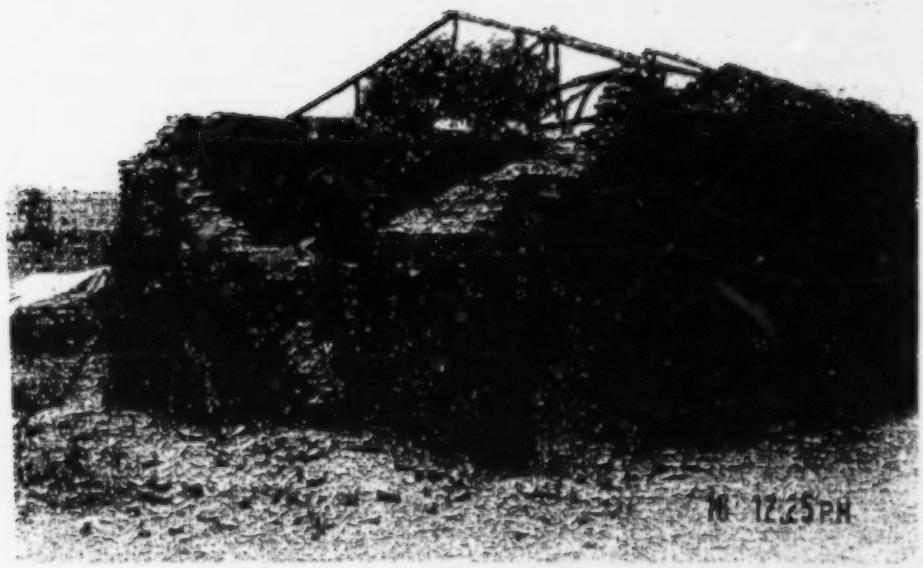
15.6 In South Darfur state the Commission visited the town of Buram, the Sania Deleiba district, Kas, Shattaya, Abram, and Kailek. During those visits witnesses testified under oath as follows: the armed opposition waged two attacks on the city of Buram, which has a population of approximately 820,000, most of whom belong to the Habbaniyah tribe. The first attack took place on 13 March 2004 and the second on 22 March 2004. Fourteen persons were killed in the second attack, including members of the armed forces and ordinary citizens. The armed forces responded with an aerial attack, dropping bombs by mistake on the Wad Hagam district, which resulted in the deaths of 48 civilians.[38]

15.7 In the Sania Deleiba district an armed conflict took place between tribes inhabiting the region. The Commission heard civilian witnesses who testified under oath that the village of Sania Deleiba and the surrounding villages had undergone armed attacks by Arab tribes during which 18 citizens were killed.

Ruins of the Agricultural Bank in Buram, after its devastation by the armed opposition

15.8 In Kas locality, witnesses testified under oath that in late 2002 armed Arab groups to whom they referred as "Janjaweed" had attacked the villages of the district lying west of the town of Kas. Citizens were killed in those villages, but the testimony did not include their number. On 1 January 2004 those groups killed 26 people in the villages of Tarango, Nabagayah, Buddu and Sani and 6 people were killed in the village of Nama on 15 April 2004. The killing of 3 persons belonging to the Arab tribes on 7 February 2004 led to large-scale attacks on the villages of Shattaya, on 10 February 2004, and Kailek, on 11 February 2004, resulting in the death of a large number of citizens belonging to non-Arab tribes. The testimonies differed regarding that number: according to the statements made by the witness Shartai (tribal leader) Muhammad Muhammad Sirah Idris, known as Siraj,[38] the total number of persons killed in the area was 600, in addition to another 400 persons killed in the village of Kailek owing to the epidemics and lack of food that resulted from the siege imposed on the area by armed groups belonging to the Arab tribes. The Commission did not find anything to back up the testimony of Shartai Siraj. Indeed, it heard the testimony of citizen Adam Salih Muhammad Atyam, who reported the killing of 51 persons in various incidents in the region, whereas according to the testimony of the witness Master Adam Ahmad Shogar, the total number of persons killed was 11. On the other hand, the Commission received lists of persons killed that had been prepared by chiefs and mayors of a number of villages, in which the total was 347 persons. In addition, the Commission made a field tour within the district on 19 September 2004 and did not find any material evidence of mass graves and the like, testimonies of relatives or eyewitnesses to the killing or the manner in which it took place. As for the killing of 400 persons as a result of epidemics and diseases owing to the siege, the Commission did not find anything to substantiate it. Nor did the witness remember the names of the killed persons mentioned in his testimony. The Commission, after visiting the graves in those two villages and assessing the testimonies mentioned above, considers it likely that the number of persons killed did not exceed 150.

15.9 In West Darfur state, the Commission visited the town of Kulbus, the Sulay'ah district in Kulbus locality, the villages of Arwala, Deleig and Tenko in Wadi Saleh locality and the town of Geneina. The Commission heard a large number of witnesses who testified under oath that Kulbus and the surrounding area, most of whose inhabitants belong to the Gimir tribe, had been the target, since August 2003, of a number of attacks by armed tribal groups belonging primarily to the Zaghawa tribe, resulting in the killing of 79 civilians and 87 members of the regular forces. The groups also looted citizens' property and destroyed the Kulbus market. It should be mentioned that according to the testimonies heard by the Commission, the armed tribal groups obtained support from some Chadian forces.[39]



Scene of destruction caused by the Arab militias at a public facility in the village of Arwala — locality of Wadi Saleh

15.10 In the Sulay'ah district, most of whose inhabitants belong to the Miseriya Jabal, the Commission questioned a number of citizens under oath and ascertained that the armed opposition movement Justice and Equality had attacked it. The Commission further confirmed that armed Arab tribal groups had attacked a number of villages in the region. During all those incidents 26 people were killed. In addition, some property belonging to citizens was plundered.

15.11 In the Arwala district, in Wadi Saleh locality, witnesses testified under oath that on 1 August 2003 an armed opposition group attacked the area and killed 6 members of the armed forces. This led to a counter-attack by the armed forces in which the opposition forces were pursued. That attack resulted in the killing of 26 citizens.[38]

15.12 It is clear from the foregoing testimonies, taken under oath, that within the framework of a large-scale offensive carried out over a period covering the years 2003 and 2004 by armed groups belonging to Arab and non-Arab tribes, the armed forces and the Popular Defence, a large number of citizens and members of the armed forces and the armed opposition were killed. Based on the testimonies, the Commission also deems it most likely that all the groups planned the offensives conducted by them and everyone who took part in any attack knew the purpose of the attack. Consequently, conduct in the carrying out of attacks was organized. However, it was not confirmed by the Commission that the attack of any group on any other group was intended to kill, either wholly or in part, any ethnic, religious or racial group. The armed aggression took place within a framework of mutual struggles and in a climate of lawlessness.

In this connection, the Commission is of the opinion that the killing that took place during the period defined and in the areas mentioned constitutes crimes against humanity, "crimes of murder", for which all parties to the armed conflict bear legal responsibility, as defined above.

16. Extrajudicial execution

The right to life is an inherent right of every human being and it is not permissible to execute or kill any person except upon the issuance of a final judgement by a competent court. That right is stipulated both in the Universal Declaration of Human Rights and in the International Covenant on Civil and Political Rights.

16.1 The World Organization against Torture, the American organization Human Rights Watch, the Darfur Lawyers' Committee and two members of the National Assembly have alleged that approximately 105 citizens were killed in the Deleig district after being led out of the village.

16.2 The Commission went to the district and investigated that allegation, hearing witnesses there (the Deleig village chief Adam Isma'il Ahmad, deputy to the Shartai Ja'far Abd Al-Hakam, and Master Jum'a Hasan Fadali), whose testimonies were as follows:

(a) On Friday morning, 5 March 2004, Deleig was surrounded by the military police and the army together with persons from Military Intelligence, and 105 to 110 persons displaced from neighbouring villages (Arwala, Sufu, Kari, Girting, Kasildu and Wazari) were apprehended;

Among them were three village chiefs, namely: Muhammad Suleiman, of Tenko; Adam Adam, of Furgu; and Jadu Khamis Abd al-Karim, of Gaba.

The arrested persons were led to the Deleig police station by the leader of the armed "Fursan" (horsemen) militias, Muhammad Ali Kosheib, and First Lieutenant Hamdi from Military Intelligence;

(b) It came to their knowledge that the arrested persons were killed and buried under the supervision of First Lieutenant Hamdi and militia leader Muhammad Ali Kosheib, but they had not witnessed this nor did they have any evidence to confirm it, such as the location of the graves. There are seven witnesses of these events (who did not appear before the Commission despite the Commission's insistence on their doing so);

(c) Village chief Adam Isma'il Ahmad testified to the killing of village chief Muhammad Suleiman at Deleig.[38]

16.3 The Commission made a tour of various parts of the Deleig area, but did not learn of any kind of destruction or burning of the village or damage to crops or property, nor did it obtain any evidence of graves or places that might point to the burial of the killed persons. It reached the following conclusions:

View of the village of Deleig — September 2004

(a) On the basis of the testimonies and observations of the witnesses, the Commission established that the village of Deleig had not been subject to any attack and that there were no signs of any fire or destruction in Deleig;

(b) Despite the allegation that 105 internally displaced persons had been executed in Deleig, this could not be substantiated by the Commission;

(c) The above-mentioned reports contain disparities regarding the number of persons killed and the places where they were executed. The fact that the number ranges from 105 to 145 raises considerable doubts as to the reliability of the sources, in addition to which all the witnesses' testimonies were based on hearsay and were not accepted by the Commission.

16.4 In this context, Human Rights Watch reported that the Sudan Liberation Movement (SLM) had attacked the region, especially the village of Bandasi, which has a population of 16,000, and that the Movement had looted the police station, seized ammunition and weapons, killed one of the arrested persons, who was of Arab stock, and kidnapped a businessman. This was followed by an offensive carried out by the police. From this it is evident that the area was the scene of battles between the parties to the conflict.

16.5 The evidence produced to the Commission to substantiate that allegation was not convincing beyond all doubt. Nor could the Commission conclude, however, that the allegation was not true. Consequently, the Commission is of the opinion, given the gravity of the allegation, that a judicial inquiry should be instituted to verify it in view of the existence of prima facie evidence and particularly in view of the fact that an accusation exists against two persons mentioned by name and seven witnesses were mentioned by village chief Adam Al-Tahir Al-Nur, who promised to produce them, but failed to do so.

16.6 The Commission took the sworn testimony of Shartai Adam Ahmad Bakhit, which was as follows: an armed looting group led by a person known as Adam Qaqa attacked the village of Tenko and was opposed by the armed forces garrison in the village, which forced them to flee. Immediately thereafter the garrison at Tenko was withdrawn to Garsila within the framework of an operation to withdraw small forces in the region because they were exposed to armed attacks. This created a security vacuum. In October 2003 armed Arab militias consisting of 250 armed men attacked the Salala village chief's office, killed eight people, seized 796 head of cattle and plundered citizens' property. On 5 December 2003 the armed forces, with the support of the Fursan forces, combed the area in search of armed elements of the Justice and Equality and Sudan Liberation movements. This had resulted, he had heard, since he was not present in the area, in the killing of 100 persons. However, he himself had buried 30 of them.[10]

He also reported that on 17 January 2004 he had met with Tenko village chief Muhammad Suleiman Ahmad, who had rebelled against the Government, and convinced him to surrender, availing himself of the related presidential pardon, and questioned village chief Suleiman in that regard. However, he learned subsequently from the executive director of Garsila, where the armed forces garrison is located, that village chief Muhammad Suleiman had been executed by the armed forces.

The Commission visited the village of Tenko and found it burnt to the ground. It found no one there except a police force that had been sent to the village following the events.

On the basis of the testimony of the witness Shartai Adam Ahmad Bakhit and those of police First Lieutenant Sa'id Adam Uthman, the Commission reached the conclusion that the events had begun with an attack against the village of Tenko in late 2003 by an armed looting group led by the person known as Adam Qaqa, which was opposed by the armed forces. Thereupon the garrison was removed to Garsila. This was followed in October by an attack by armed Arab groups, who killed eight persons and stole 496 head of cattle and property belonging to the citizens. There followed combing operations carried out by the armed forces in a search for members of the armed opposition. This resulted in the killing of 100 persons, in the burial of 30 of whom Shartai Ahmad Bakhit took part.

16.7 In view of the testimonies mentioned above, the Commission is of the opinion that there exists prima facie evidence that village chief Muhammad Suleiman and others were killed under the circumstances described above. The Commission did not definitively accept those testimonies, inasmuch as they are not entirely conclusive. For that reason the Commission considers that a judicial inquiry should be conducted concerning those events.

16.8 In South Darfur state, and more specifically in Buram, some citizens have accused the armed opposition forces of killing 14 persons wounded in military operations who were being treated in hospital.

The Commission investigated that accusation and heard, under oath, the Buram hospital medical assistant, another citizen by the name of Bashir Faruq and a person employed in the pharmacy, who testified that they had seen members of the armed opposition kill wounded persons attempting to escape from the hospital after it had been attacked and burn Second Lieutenant Mu'tazz and Corporal Jum'a in a square near the hospital after pouring an inflammable substance over them.

The Commission considers that it should accept those testimonies and finds that the opposition forces killed and executed wounded persons and that what took place constitutes extrajudicial execution.

16.9 In Kulbus, in West Darfur state, the Commission heard a number of inhabitants of the region. The tenor of their statements was that approximately 700 members of the Zaghawa tribe had attacked the village of Batro, situated east of Kulbus and that in the attack Sheikh Al-Khalwah and four of his students were burned to death.[58]

In view of this allegation, the Commission investigated the charge and heard five witnesses who testified under oath. The Commission established that the execution of the said persons had occurred and consequently ruled that extrajudicial execution of citizens in Batro had taken place.

16.10 Citizens Ahmad Muhammad Abd Al-Mawla, Isma il Abkar Hasan, Ibrahim Muhammad Salih and Al-Nur Al-Hajj, all from the Tawila district, appeared before the Commission. Some of them stated that after the district was invaded by the militias and the armed forces, a group from the Kinnin tribe apprehended 11 persons from the Tawila district and fired at them, killing 9 of them.

The Commission investigated this charge and heard the said persons, who testified under oath, confirming their accusation. No other person disproved that accusation, nor did the Commission find any evidence to counter these allegations. The Commission therefore ruled that nine persons had been extrajudicially executed in Tawila.

16.11 The Commission investigated two allegations contained in a memorandum by Darfur Lawyers concerning the killing of four citizens in Geneina locality in which the defendant is an armed forces officer, Major Ahmad Abd Al-Rahim Shukratallah. Similar charges against the said Major were contained (without any specification of the number of persons killed) in the Human Rights Watch report issued in May 2004.

Witness being sworn, Buram, September 2004

The Commission heard the Geneina Commissioner, who stated that he was not aware of the incident due to the fact that he had been appointed shortly before the date of arrival of the Commission. Inasmuch as, owing to security reasons, the Commission was unable to visit the area where the events reportedly took place, it is unable to determine whether the allegations are true or otherwise. It consequently considered that a judicial inquiry into those allegations should be conducted.

17. Rape — a crime against humanity

There have been widespread reports of crimes of rape in the international media. The International Crisis Group has accused the Government of the Sudan and the militias of abducting 16 girl students from the Tawila district, in North Darfur state,[59] and Human Rights Watch, in its report issued on 7 June 2004,[22] levelled the accusation that rape and acts of sexual violence had been committed against 93 girls in the Tawila district, though the report does not mention the victims' names. The organization's report stated that rape and sexual violence had been committed by members of the armed forces and certain militias. The accusation has also appeared in a number of reports of Amnesty International[60] and the Darfur Lawyers' Committee has levelled the same accusation, though without specifying any number or mentioning any names.[32]

17.1 South Darfur state

The Commission visited the Tawila district on 13 September 2004 and heard a large number of witnesses who gave their testimonies under oath. One of them was Administrative Officer Isma'il Omar Hussein, citizen Ahmad Muhammad Abd Al-Mawla, from the village of Gelli, and the chief of the police unit, Major Al-Walid Al-Sharif Al-Imam.

The purport of the testimonies of those witnesses is that on 28 February 2004 a number of women were raped in the Tawila district. According to the testimony of witness Ahmad Muhammad Abd Al-Mawla, during a gathering of a number of men and women outside of the village of Gelli, near Tawila, two persons mounted on horses appeared and took two of the girls, namely Fat'hiyah Idris and Hawa' Jum'a, and, after beating them, raped them before the group.

17.2 The Commission decided to undertake a second visit to Tawila after it requested those present to summon all the women who alleged that they had been subjected to rape or sexual violence to appear before it in order that their depositions might be taken. On the following day four women appeared before the Commission, namely: citizen Jum'a, aged 13 years, from the village of Nami; Fat'hiyah Idris, aged 15 years, from the village of Gelli; Nariyah Abd Al-Rahman Hasan, aged 16 years, from the Kalma camp; and Maryam Muhammad Adam, married, a resident of Tawila.[38]

The Commission also heard the following witnesses: Ibrahim Muhammad Salih, village chief Ahmad Uthman Sam, Isma'il Abkar Hasan, and the father of one of the raped girls, in addition to the women who appeared before the Commission. The women testified that they had been subjected to rape. The Commission had recourse to a doctor, police Major Abd Al-Azim Hussein, who testified after conducting a medical examination that there were indications of sexual intercourse with the said women and girls. Some witnesses testified that some of those who had

committed sexual intercourse belonged to the Kinnin tribe while others belonged to the Arab tribes that accompanied the armed forces.

17.3 The Minister of Justice established three committees each made up of a female judge, a female legal counsellor and a female police officer to investigate the crimes of rape. These committees broadcast repeated calls via the various local media in Darfur in addition to conducting field visits during which they went to camps for internally displaced persons in the three Darfur states and requested women and girls who alleged that they had been subjected to the crime of rape to come to them. The Commission considered that it should accept the findings of the said committee owing to its neutral character. In addition, the fact that it was a committee of women would encourage women to talk to it about the rapes. The chairman and three members of the Commission participated in some of the activities of the committee to make sure that investigation was properly conducted, so as to be able to take into account the contents of its report.

The committee established by the Minister of Justice conducted an investigation after hearing the victims and referring them to the doctors and arrived at the following conclusions:[61]

17.4 South Darfur state

Through investigations in the camps mentioned in the report, conducted with all the competent authorities concerned with the matter, the committees formed by the Public Prosecutor concluded that the alleged crime of rape meant something different to the women, to whom it signified forcibly taking them out of their homes, treating them harshly and with force and beating them. This became clear from the statements made by the internally displaced women in the camps, as confirmed by the allegations made by a number of women in the town of Kas that they had suffered rape, whereas medical examination in accordance with criminal form No. 8 did not reveal any signs of that crime. Rather, there were bruises on their bodies that showed that they used the term "rape" to mean "beating". The Commission reached the conclusion that it had not found any cases of rape or criminal actions entered under article 149 of the 1991 Sudanese Criminal Code on a collective basis or by a specific party. Moreover, the cases that did occur did not go beyond ordinary offences that might be committed even within safe large cities where stability reigned.

17.5 West Darfur state

The report of the committee to investigate crimes of rape stated the following:

(a) Rape complaints are complaints lodged individually, not on a collective basis;

(b) Most of the rape complaints are lodged against unknown persons;

(c) All rape complaints relate to occurrences outside the camps;

(d) When visits were made to some camps, it became apparent that the crimes of rape were merely allegations and rumours and that all the women in the camps had simply heard about them;

(e) The women did not know or understand the meaning of the word "rape", owing to the women's relative lack of awareness.

17.6 The Commission feels it should point out that the statements contained in the Amnesty International report dated 8 May 2004[60] concerning incidents involving rape in Darfur are attributable to Sudanese refugees with whom the organization met in Chad. In addition, according to the report, the testimonies given before the committee were based on hearsay and the names of the women giving them were not mentioned, but rather indicated in the report by the women's initials. The Commission made this legal observation to the organization's delegation, with which it met in Khartoum. In a subsequent report on the theme of rape as a weapon of war in Darfur, published on 19 July 2004 at a press conference held in Beirut, Amnesty International repeated those accusations.[62] The Commission considers that the Amnesty International report is not reliable from the purely legal standpoint. It is striking that at the close of its report of 8 May 2004, the organization mentions that it is not in a position to judge whether the events that have taken place in Darfur constitute genocide or whether there has been an intention to annihilate racial, religious, ethnic or national groups, either partially or wholly.[60]

Rape, as a crime against humanity, according to the criteria of international law, as found in article 7 of the Rome Statute, requires sexual assault and the element of penetration of the penis into the vagina or anus of the woman by force. Those elements constitute the offence of rape in the Sudanese Criminal Code. What distinguishes rape as a crime against humanity, on the other hand, is that acts of rape are committed on a wide scale in order to humiliate the raped womens' people and that all this takes place with the knowledge of all who commit the crime of rape.

17.7 The testimonies given before the Commission concerning the events of Tawila in North Darfur state and the findings of the investigation conducted in South and West Darfur states do not constitute proof that crimes of rape occurred on a wide scale with planning by a specific group against another group. The investigation established that crimes of rape had occurred in the Darfur states, but not in the manner or to the extent stated by the media or the organizations that wrote on the subject. The Commission deems it likely that old feuds and rancour between some of the tribes were among the principal motives that led the various parties to commit crimes of rape.

17.8 The views propagated by the media concerning rape in the Darfur states are characterized by exaggeration and have besmirched the reputation of the people of the Darfur region, and indeed all the people of the Sudan, and made light of its deep-rooted customs and traditions. Accusations of the kind made in the world media do not help to mend the social fabric in Darfur.

17.9 For the reasons presented, the Commission finds that crimes of rape were committed and must be tried before the competent jurisdiction in the Sudan; however, on the basis of the definition referred to above, the crimes of that nature that have been confirmed by the Commission do not constitute crimes against humanity.

18. Forcible transfer or ethnic cleansing

Ethnic cleansing has been known for centuries, but the term gained broad currency at the time of the recent war in Yugoslavia during the final decade of the last century. The twentieth century saw events involving ethnic cleansing in a number of countries, some examples of which are the ethnic cleansing of the

Armenians in the Balkans in 1922, the expulsion of the Polish from White Russia in 1932 and the mutual ethnic cleansing between Greeks and Turks in Cyprus in 1974.[36]

18.1 Ethnic cleansing is generally defined as meaning the evacuation of a racial group or a group which speaks one language or in which a particular culture predominates from an area of land in which it has become legally established, such cleansing being effected forcibly so as to substitute another group that differs from the first in terms of race, language or religion. "Ethnic cleansing" differs little from "forcible displacement": they are two sides of the same coin, though the term "forcible displacement" has been in use longer than the term "ethnic cleansing".

18.2 Ethnic cleansing has long been closely associated with the concept of the formation of the nation-state, in order for the State to be homogeneous, not heterogeneous, in its culture and religion. The notion necessarily entails the rejection of a pluralistic concept of society.

18.3 The International Criminal Tribunal for the Former Yugoslavia has ruled that ethnic cleansing constitutes a crime against humanity. Article 7 of the Rome Statute of the International Criminal Court establishes that forcible transfer of population, too, constitutes such a crime.

18.4 An accusation of forcible displacement was contained in the report dated 7 June 2004 of Human Rights Watch,[22] an American organization, where it was alleged that more than 36 villages in West Darfur state had been displaced. In addition, some reports took the internal displacement of the population as being connected with forcible displacement.

18.5 In order for us to confirm that a crime of forcible transfer or ethnic cleansing has been committed, four components, as mentioned above (cf. paragraph 11.6), must be found to exist.

18.6 It was confirmed by the Commission, on visiting the Kas district, that a number of groups made up of members of Arab tribes had attacked the Abram district, specifically the villages of Murray and Umm Shake. This is an area in which there is fertile land and abundant water. The attack took place in 2002 and was followed by the occupation of the area, after the forcible expulsion of its Fur inhabitants. The Arab groups continue to inhabit and plant crops in the area. The Kas district Commissioner confirmed that allegation and testified that he had set up a committee to inquire into the facts in the areas where the events had taken place in Kas locality and return property to its respective owners.

Scene in the Tawila district — North Darfur

18.7 On the basis of the facts ascertained, what occurred in the Kas district was a displacement of the population of Umm Shake and Murray that was without any basis whatsoever in international or local law, and the expulsion of the Fur tribes from those areas was done by force. Applying the elements of the crime of forcible transfer to these facts, the Commission finds that the crime was indeed committed in those villages and rules that the investigation into those events should be pursued in order to repair the harm done and bring the perpetrators of the crime to trial.

18.8 Accusations have been made in reports by various organizations that a number of villages were burned and their people fled from them. The American organization Human Rights Watch, for example, reported on 7 June 2004 that 21 villages had been burned in South Darfur state.[22] Shartai Muhammad Bashshar testified before the Commission on 27 May 2004 that 200 villages in Wadi Saleh had been burned[63] and the Sudanese Human Rights Group alleged that 435 villages had been burned,[35] but did not specify the names and locations of the villages.

The Commission is of the opinion that the events must be examined within an overall framework with a view to determining whether ethnic cleansing or forcible transfer took place and that one must also take into account, within that framework, whether the burning was accompanied by the killing of citizens or compelling of citizens to leave their villages and the occupation of those villages by the perpetrators.

18.9 Upon investigation the Commission confirmed that a large number of villages had been subject to burning during armed clashes between the various parties, as had happened in earlier conflicts, albeit not on the same scale. The Commission observed that a large number of villages in the Wadi Saleh area had been either totally or partially burned and that villages in the Geneina and Kas localities had also been burned. The Commission of Inquiry ascertained that most of the citizens in the villages subjected to burning left them and carried some of their belongings with them. It was not confirmed by the Commission, however, that any citizen was burnt to death. The Commission saw most of the burnt villages and found that they consisted of huts the lower half of which is built of mud and the top of straw and wood, thus making them easy to burn. Apart from this, in most of the areas burned the Commission did not see any inhabitants who were among the criminals that had attacked this region. If any settlement took place, it would have had to be in a small number of villages not seen by the Commission.

18.10 The Commission ascertained that a large number of internally displaced persons left their villages at a time when a state of terror prevailed over most of the regions of Darfur, especially after the armed opposition attacked the El Fasher, Kutum, Tawila and Meleit areas and the villages of Wadi Saleh, Kulbus and Buram. Some of the causes of that fear, which induced citizens to seek refuge in the state capitals and large towns and cities, were the seizure and destruction of police stations and the killing of hundreds of policemen; the seizure of weapons;[64] attacks on symbols of authority such as judges and public prosecutors; the kidnapping of businessmen; attacks on relief convoys and some native administration leaders. All this caused citizens to flee by the tens of thousands and led to the establishment of camps for internally displaced persons. It is not true that all those citizens were the victims of killing, rape or looting; rather, it was the state of fear which had seized them that prompted the majority of them to seek refuge in centres of authority. The Commission, in its visits to various camps, at its meetings with representatives of

humanitarian organizations[54] and upon examination of the reports of the Ministry of Humanitarian Affairs,[55] did not establish that there had been any attempts to compel the internally displaced persons to return to their regions. However, following the deployment of 12,000 policemen[56] and the securing of many areas, some internally displaced persons began to return voluntarily. Some persons in the camps, however, who belonged to the armed opposition, played a negative role in that regard. The most recent reports issued in that connection state that the number of persons who had voluntarily returned to their areas up to 2 January 2005 was 340,000, including 18,000 families who had returned from Chad.[57]

18.11 The disastrous desertification that has affected some of the areas mentioned above led to the migration of a number of tribes affected by the environmental changes to areas inhabited by other tribes. The Commission has not found, however, that the tribes affected by desertification who left their areas drove other tribes from the lands in which they were settled. Rather, the displaced tribes shared the area with the people of that area. The Nazer of the Bani Halba tribe, Al-Hadi Isa Dabkah, testified before the Commission that "when groups of the Fur tribe left their homes as a result of the recent events, they sought refuge in the lands of Bani Halba, of whom they are still guests."[58] The Nazer of the Habbaniyah tribe, Salah Ali Al-Ghali, testified to facts of the same nature before the Commission.[59] What emerges from these testimonies is that the notion of one tribe occupying the land of another tribe is not found in the tribal traditions prevalent in the Darfur states.

18.12 Some natives of Kulbus testified, when the Commission visited that area, that armed groups from the Zaghawa tribe had repeatedly attacked the area for the purpose of driving out its inhabitants, who belonged to the Gimir tribe, which has Arab roots, and occupying the areas inhabited by them, and that this had taken place within the framework of a plan to expand the territory occupied by the Zaghawa.[60] A number of witnesses testified to similar events before the Commission in Khartoum.[61] The Commission cannot but observe that, while the allegation regarding the existence of such a plan on the part of the Zaghawa tribe may be true, it was not carried out, so that the factors that would constitute a crime are not fully present.

18.13 On the basis of the foregoing, the Commission finds that, with the exception of the case that occurred in Kas locality, which has been discussed above and which relates to forcible displacement, the elements that would constitute the crime of ethnic cleansing are not present in the case of areas burned and abandoned by their inhabitants. The Commission is of the opinion that the events that occurred in those areas represent forcible displacement out of fear of being killed and fear of violence and the seeking of refuge in secure areas under the control of the Government or of certain tribes. The Commission must point out that historical precedents in Turkey, during the First World War, and in Cambodia, during the 1970s, show that the displacement of the Armenians effected in Turkey and the displacement of citizens in Cambodia were carried out by the Governments of the two countries. The situation in the Sudan is different because the Government of the Sudan did not force citizens out of their lands; rather, they left for a variety of reasons and went to areas that were under the control of the Government, considering them as safe areas.

18.14 It should be noted that in her final report, the Special Rapporteur of the Commission on Human Rights on extrajudicial, summary or arbitrary executions states that what took place in the Darfur states constituted forcible displacement.[62]

18.15 In the 1993 report of the United Nations Special Rapporteur on the human rights dimensions of population transfer one finds the following statement: "As much as population transfer has prevailed as an instrument of State-craft in every age in recorded history, ours could be distinguished as the century of the displaced person."[70]

Damage caused by the armed opposition forces in the Kulbus market

18.16 The Commission realizes how loathsome it is to be driven out and forcibly displaced and is aware of the consequences, namely the severance of family bonds and its negative impact on cultural and social ties, not to mention the disruption of citizens' living conditions. It therefore considers that the effort towards the voluntary return of internally displaced persons to their regions, once a suitable economic and security environment has been established, must be at the top of the list of priorities of the parties involved in the conflict in Darfur. The Commission notes that the deployment of 12,000 policemen[66] is the right beginning for creating that environment. However, the Government must re-examine administrative procedures and the implementation of appropriate policies, while the international community, which is making enormous efforts, must offer the necessary support for the return of displaced persons in coordination with state and federal authorities.

Conclusion

1. In carrying out its mandate, the Commission followed an integrated approach based on the investigation of the causes of the conflict that led to human rights violations in Darfur. This required in-depth studies of the historical roots of the conflict; geographic, economic and environmental factors; the demographic structure of the population; interaction with neighbouring States; deep-rooted customs and traditions, especially those relating to the settlement of tribal disputes; and the phenomenon of the flow of arms from neighbouring countries since the early 1980s. It was also essential to conduct an in-depth study of conflicts in Darfur in the final decades of the last century; their relation to the present conflict; the causative factors and repercussions of that conflict; and the means adopted to contain and remedy it. It was able to do this only after conducting lengthy meetings with representatives of all segments of Darfur society and examining the studies on Darfur.

2. It was necessary to become familiar with all the reports relating to the current conflict and the various documents obtained by the Commission from all the ministries and to study the reports of the various missions that had visited Darfur and the reports of the United Nations and international organizations, including international human rights organizations, as well as the reports of the public prosecutor's office and the judicial authorities. It was important for the Commission to consult international humanitarian law and human rights law and to study international precedents in order to have an understanding of the accepted legal criteria and their application to the facts, so as to be able to adapt them properly.

3. The various facts that the Commission managed to obtain in a variety of ways, as mentioned above, and its repeated visits to the Darfur states and to the scenes of the events enabled it to prepare detailed lists of the allegations of human rights violations in each of the three states. In this way it was able to grasp the problem in all its dimensions and understand its fundamental realities, which required a detailed investigation.

4. Thereafter, the Commission began its detailed inquiries, in which it arrived at the findings set out in the report, applying international standards and taking into account the antecedents that had occurred in other countries under similar circumstances.

(a) The Commission found, after the investigations which it conducted, as mentioned above, and after numerous visits to the conflict areas and an evaluation

of the testimonies which it received, that there had occurred important human rights violations in all three Darfur states in which all the parties to the conflict had participated in varying degrees and which caused human suffering for the people of Darfur, involving displacement and the seeking of refuge in Chad. Those violations gave rise to the creation of this Commission and were widely reported by the local and international media and taken up by international human rights organizations. This spurred some countries to adopt attitudes towards the Sudan which, in the eyes of the Commission, reflected an overreaction and ignorance of the causes of the existing conflict and of how it had developed;

(b) What happened in Darfur, despite its magnitude, does not constitute the alleged crime of genocide according to international legal criteria. Indeed, the required conditions are not met, because the Commission did not find that any protected group, i.e., a "national, ethnical, racial or religious group", had suffered "bodily or mental harm" or been subjected to "conditions of life calculated to bring about its physical destruction in whole or in part" that were deliberately inflicted. The events that occurred in Darfur do not resemble what happened in Rwanda, Bosnia or Cambodia, for in those earlier cases the State followed policies that led to the destruction of a protected group. The Commission found that those events were the result of the factors mentioned and the circumstances explained in the report and that the description of what happened as constituting genocide was the result of exaggerated numbers of persons killed that were not substantiated by the Commission (see para. 13 of the report);

(c) The Commission ascertained that the armed forces had bombed a number of areas in which members of the armed opposition had sought shelter and that some civilians had been killed as a result of that bombardment. The armed forces undertook investigations into the matter and provided compensation to the injured parties in the Habila, Umm Gozin and Tulo districts. The investigation is still under way with regard to the incident at Wad Hagam, which is inhabited by Arab groups belonging to the Habbaniyah and the Tarjam. In addition, the injured parties in other regions belong to various tribes and no particular racial group was targeted. The killing of civilians in battles is something that happens despite the precautions taken, and during the Commission's questioning of the representative of the armed forces, the latter stated that all the required precautions had been taken and that what happened was an unfortunate incident concerning which the armed forces had undertaken an investigation and the compensation of the victims;

(d) The Commission also found that the armed opposition committed many violations, killing unarmed civilians and wounded soldiers in the hospital in Buram, where the headquarters of the Nazer of the Habbaniyah tribe is located, and burning some persons alive, including Second Lieutenant Mu'tazz and Corporal Jum'a. Indeed, the witness Bashir Faruq Ali Al-Ghali testified that he had seen members of the armed opposition wrap the two said persons, who were alive, in a mattress and set fire to them;

(e) The Commission also ascertained that many of the instances of killing were committed by various tribes against one another in the atmosphere of conflict that obtained in some districts, such as Sania Deleiba and Shattaya. However, many of the violations reported concerning incidents of killing were attributed to the Janjaweed either directly or in their collaboration with the Government. It became clear to the Commission in its investigation into those allegations that the notion of

"Janjaweed" was a vague concept and that the phenomenon was the result of numerous factors, including armed plundering, displacement, the seeking of refuge from neighbouring countries, the spread of weapons, the relations among lawless elements outside and inside the Sudan and widespread unemployment. It also became clear to the Commission that those involved belonged to various tribes bound together by their own interests that engage in armed looting of livestock in which they trade with foreign countries and that their practices were characterized by violence. Our view has been confirmed by Human Rights Watch researcher Jemera Rone, who points out that there are Janjaweed belonging to the Zaghawa tribe as well as other tribes. She states that according to the testimonies collected, the Janjaweed spontaneously undertake to burn villages and that they attack villages that are attacked by the Government forces and in which there are not many armed opposition forces[29] (cf. section 8);

(f) In all the foregoing cases the killing of civilians constitutes a violation of common article 3 of the 1949 Geneva Conventions (cf. section 15 above) and therefore requires further inquiry and investigation and the bringing of the perpetrators to justice;

(g) The instances of killing, with the various circumstances that surround them, committed by all the parties to the armed conflict and amounting to violations of common article 3 of the 1949 Geneva Conventions do not, in the estimation of the Commission, constitute a crime of genocide due to the absence of the factors that constitute that crime, and specifically, the lack of proof that any protected group was targeted. Nor has it been demonstrated that there existed a criminal intent in the events investigated by the Commission;

(h) There have been allegations of cases of extrajudicial execution by all parties, some of which were not found by the Commission to be beyond the shadow of a doubt. For that reason, in specific cases mentioned in the report the Commission has recommended the holding of an independent judicial inquiry (cf. section 16 above). The reason for this is that, pursuant to paragraph 12 of the 1954 Investigation Committees Act, no statement made before the Commission is admissible as evidence in any court. The article reads as follows:

> No statement made during any investigation conducted pursuant to this Act shall be admissible as evidence before any court, whether civil or criminal;

(i) As to crimes of rape and sexual violence, which were the object of some attention in the international media, the Commission investigated them in all the Darfur states at various levels and heard a number of witnesses under oath, including the victims, in whom it had medical examinations performed. The Commission also took into account the detailed reports of the judicial committees that had visited various areas in Darfur, including internally displaced persons' camps;

(j) On the basis of all these facts, the Commission concluded that rape and sexual violence had been committed in the Darfur states. However, it also concluded that those occurrences had not been systematic or widespread, so as to constitute the alleged crime against humanity. The Commission also found that most of the rape charges had been filed against unknown persons. Nevertheless, investigations led to the levelling of accusations against a number of persons, including 10 members of the regular forces, who have been stripped of their immunity by the Minister of

Justice and are being tried. Most of these crimes were committed individually in the prevailing climate of lawlessness and lack of security;

(k) The Commission came to realize that the word "rape", both in its legal and ordinary meanings, was not understood by the women of Darfur in general. They believed that "rape" meant the use of violence to compel a person to do something against that person's will, not specifically rape in the sexual sense (cf. section 17 above). It is unfortunate that group rape scenes were photographed in order to be shown outside the Sudan. It was subsequently found that they were contrived, and some of the persons who participated confessed that they were offered sums of money as an inducement to appear in those scenes (compact disc annexed);

(l) Forcible transfer (displacement) as a component of ethnic cleansing, which means forcible or violent displacement of an ethnic group or a group which speaks one language or in which a given culture predominates from a land in which the group has settled legally to another area and has been associated throughout history with the idea of the formation of a "nation State", is a crime against humanity;

(m) The Commission therefore visited several areas in the Darfur states where forcible transfer or ethnic cleansing were alleged to have taken place. The Commission interrogated the people of those areas and ascertained that Arab tribal groups had attacked the Abram district, specifically the villages of Murrayah and Umm Shawkah, driven out the non-Arab groups and settled there. However, the authorities, as reported by the Commissioner of Kas locality, have begun to take measures to rectify the situation and return property to its owners. The acts of some Arab groups led to the forced displacement of the aforementioned groups. The Commission is therefore of the opinion that a judicial inquiry should be conducted to determine the conditions and circumstances that gave rise to those events. If it is found that a crime of forcible transfer was committed, legal proceedings will be instituted against those groups, due to the fact that what took place might set a dangerous precedent that violates prevailing customs and lead in turn to similar acts, with a resulting aggravation of the problem;

(n) The Commission visited many of the villages that had been burned in the three Darfur states. Finding most of them uninhabited, it was not able to question the inhabitants. In some of them the Commission found police forces, recently deployed after the incidents in preparation for the voluntary return of the displaced persons. However, the testimonies of the Shartai and village chiefs, whom the Commission asked to accompany it, and the factual evidence indicate that the responsibility for the burning of the villages, in the prevailing climate of blazing conflict, belonged to all the parties. It was found that the acts of burning were the direct cause of the displacement of the inhabitants of the villages, who belonged to various tribes, primarily Fur, to camps in the vicinity of safe areas, where various services were available. On the basis of these findings, the Commission considers that the evidence does not support designating these as crimes of forcible displacement, with the exception of the incident referred to above concerning which it recommended that an inquiry should be conducted;

(o) The incidents that occurred led to the displacement of a large number of citizens and gave rise to panic. This caused many citizens to leave their villages and move to the camps. The Commission found that the Darfur tribes belonging to the

different ethnic groups offered accommodation to those who came to them and that no tribe settled by force in the quarters of another tribe. This was confirmed by the Nazer of the Bani Halba and the Nazer of the Habbaniyah (cf. section 18 above).

5. The current situation in Darfur, with the human suffering it entails and the unprecedented international intervention it has drawn, has provided opportunities for certain self-seeking individuals to engage in exploitation. It has also offered opportunities for some international organizations operating in the field of human rights to level charges of violations of international humanitarian law and human rights law and to exert pressure on their Governments and on international organizations on the basis of information some of which has been found by the Commission to be less than correct, out of keeping with the facts and in some cases subject to exaggeration. To give only one example, with regard to the numbers of internally displaced persons and refugees, we find that the contradictions in the figures reported by international humanitarian organizations detract from the credibility of the reports and call into question their sources. The organization Save the Children USA, for example, reported on 6 May 2004 that the number of internally displaced persons in Darfur was 1 million, while the refugees totalled 135,000.[25] At the same time, the International Crisis Group claimed, on 25 March 2004, that the number of internally displaced persons in Darfur was 1.2 million and the number of refugees, 200,000.[59] Subsequently, on 7 June 2004, Human Rights Watch mentioned numbers lower than those of its two colleagues, affirming that the number of internally displaced persons in Darfur was 1 million, while there were 110,000 refugees.[22] Perhaps this discrepancy in the figures is due to the fact that these reports are drafted haphazardly and are not based on facts on the ground or reliable field surveys. Furthermore, most of the organizations in question expressed a priori condemnations of the Sudanese Government or gave specific descriptions of the situation in Darfur and subsequently tried to substantiate them. The United Nations Under-Secretary-General for Humanitarian Affairs described what was happening in Darfur as the world's worst humanitarian disaster.[21]

6. The Office of the United Nations High Commissioner for Refugees indicated in its report of 7 May 2004[37] that the attacks of the armed opposition were the spark that ignited the fire of war and combat in Darfur due to the fact that those attacks targeted armed forces garrisons and police stations, eliciting a violent response on the part of the Sudanese Government, especially after the armed opposition's attacks on El Fasher in April 2003 and Kuttum in August 2003. All this gave rise to the extensive human rights violations and the large-scale movement of displacement and seeking of refuge that shook the international community. Despite the fact that all the human rights violations that occurred or are alleged to have occurred involved the armed opposition (the rebels), all that was mentioned in the reports of the international human rights organizations such as Human Rights Watch and Amnesty International was a negligible number of such violations that were subsequently confirmed by the Commission, as mentioned in the Amnesty International report dated 8 May 2004.[60] The gist of them was that the armed opposition had bound prisoners in chains and forced them to drink hot pepper sauce mixed with chemical acids and petroleum-based substances. The Commission observed many human rights violations in a number of districts, such as the armed opposition's acts of aggression against the districts of Kulbus, Buram and Meleit and its perpetration of heinous human rights violations. The fact that this side,

however, was given no place in the international media helped to create a world public opinion that is hardly unbiased, resting as it does on a picture that is inaccurate and incomplete. This resulted in the adoption of decisions at the international and regional levels and even the bilateral level in which only one side of the truth and the facts was considered. This has helped to complicate the problem and has led to the introduction of a private agenda, delayed a political solution and caused the failure of all conferences and rounds of negotiations aimed at finding a solution. The international community has finally realized this and begun to demand that the two sides accept their responsibility for the deterioration of the humanitarian and security situation in Darfur (Boucher talks). It has also begun to exert some pressure on the two armed opposition movements to end their repeated violations of the ceasefire and of human rights, especially after the signing of the security arrangements protocol between the two sides in Abuja in November 2004. In addition, Mr. Jan Pronk, the Special Representative of the Secretary-General for the Sudan, stated in his 4 November 2004 briefing to the Security Council on the situation in Darfur that there was a leadership crisis in the rebel movements and that some commanders were resorting to "stealing, hijacking and killing, [and] some seem to have begun acting for their own private gain." "The rebels now control so much of the territory that they must take responsibility for the people there ... or they may turn to preying on the civilians ... and we may soon find Darfur is ruled by warlords", he said. Within the same context, United States State Department spokesman Richard Boucher, speaking at a press conference held on 20 December 2004, said, "We want to emphasize that the Darfur rebel groups — the Sudan Liberation Movement and the Justice and Equality Movement — must also respect the ceasefire agreement and the terms of the humanitarian and security protocols that have been signed in Abuja".

7. International human rights and humanitarian aid organizations have turned a blind eye to the armed opposition's attacks on and plundering of relief convoys and kidnapping and killing of humanitarian aid workers, despite the fact that these constitute flagrant violations of international humanitarian law and have thwarted relief operations for the region's needy. Examples of this are the attack by members of the armed opposition on a Save the Children (UK) convoy on 3 July 2004 on the Madu-Meleit road, in which they seized six vehicles belonging to the organization and stole a number of pieces of communications equipment (Thuraya), and their repeated kidnapping of relief workers belonging to international humanitarian aid organizations. Indeed, on 6 June, elements of the armed opposition kidnapped 16 United Nations relief workers, three of whom were foreigners. In addition, the explosion, on 10 October 2004, of a landmine planted by rebels resulted in the killing of two Save the Children (UK) employees and the wounding of another, north of Darfur in the Umbaru region. Mr. Jan Pronk, Special Representative of the Secretary-General for the Sudan, condemned the incident, which he termed tragic.[72]

8. The events in Darfur were due to a number of factors, some of which were the following: disregard for the root causes of the problem, the confounding of those causes and an attempt to deal instead with the consequences. As a result, the problem was taken out of its proper framework and placed in another that included political demands relating to issues of marginalization and wealth- and power-sharing. The solutions to the problem thus overlapped and interpenetrated one another between the humanitarian, security, economic and political fields, creating obstacles to the negotiations between the Government and the armed opposition. A

further factor was the inability of the state system, with all its legislative, executive and security institutions, to comprehend and treat the problem at the outset. This rendered it impossible for the federal authorities and their instrumentalities to take the necessary decisions in time, so as to forestall the humanitarian repercussions, place them in their proper context and prevent them from becoming internationalized. Still another factor was the erroneous idea, adopted by some States, of exerting constant pressure on the Government as a way to solve the problem. That idea, it should be said, has begun to be revised by the international community in accordance with the facts on the ground that have come to light in the Darfur states. Indeed, the international community has come to understand that the problem can only be treated by dealing with its root causes and through the adoption of political solutions that take account of the legitimate demands of the parties to the conflict and that the internationalization of the problem in the manner in which it was done contributed directly to its aggravation.

9. The Commission is not able to determine precisely the number of persons who have been killed. However, the findings contained in the body of the report confirm that for all parties, including the armed forces and the police forces, the number killed does not exceed a few thousand and that the figures circulated by the media and in the reports of some international organizations are inaccurate. The Commission adds that its findings are based on the investigations it was able to carry out, for no meeting took place between the Commission and the armed opposition and it was not possible for the Commission to visit refugee camps in Chad.

10. The losses of human life and property to which the events in Darfur have given rise are tragic and unacceptable. As mentioned above, the Commission has investigated the losses of life. Concerning property losses, however, it has received reports from the official quarters, specifically the Ministry of the Interior, the armed forces, the state authorities and the judicial authorities.[73,40,18] Though the Commission saw sites of the events and property losses, it was not able to obtain all the information on citizens' losses, due to the fact that many of the victims were in camps and it was not possible for the Commission to question them one by one. For this reason the Commission deems it appropriate to entrust the investigation of property losses to a competent judicial committee to which every facility must be afforded to enable it to arrive at figures as close as possible to the truth, thus providing information for the desired solution to the problem. It must be mentioned, however, that the Commission has examined the files of the Public Prosecutor's Office and the judicial authorities and found that there is considerable exaggeration, and the lawsuits and judgements relate to that aspect.

11. It must be said that the conclusions reached by the Commission are borne out by numerous views expressed by the international community, including the statements of President Obasanjo, President of the African Union, a report in *The Times* of London of 25 September 2002, the British medical journal *Lancet*, the studies done by a French scientific team headed by Evelyn Depoortere of the French medical survey group Epicentre, Doctors without Borders experts, a report in *The Observer* of 3 October 2004 and a report of the delegation of the Arab Doctors' Union. There is also other evidence, including the fact that many individuals in the armed forces belong to the various tribes of Darfur; the fact that members of the tribes allegedly subjected to genocide participate in the federal and state authorities

at all levels and in the delegations negotiating with the armed opposition; and the movement of internal displacement to Government-controlled urban centres.

12. We should mention that prior to the aggravation of the problem, during the period from 16 August 2002 to April 2004, the Government organized several tribal conferences and sent delegations of Fur and Zaghawa tribal leaders to negotiate with the armed opposition. It also sent a high-level delegation made up of the Federal Minister of Education and the Governor of Nahr an Nil state, both of whom are from Darfur, in addition to 31 other natives of Darfur. Furthermore, the Governor of North Darfur state, the former head of the security maintenance mechanism, Lieutenant-General Ibrahim Suleiman, and state authorities were negotiating with the armed opposition and reached an agreement in principle on the settlement of all aspects of the conflict a few days prior to the attack on El Fasher in April 2003 (cf. paras. 3.3 and 3.4 above).

13. The Commission found that a number of officers and other members of the Chadian armed forces had had a hand in the attacks suffered by the Kulbus district. Witnesses named two officers, i.e., Muhammad Jamal and Hussein Jireibo. This is perhaps due to tribal interconnectedness in the region, cross-border alliances of members of tribes and the practice of reciprocal acts of looting.

14. In its report, the Commission recommended the formation of judicial committees of inquiry, as follows:

(a) Establishment of a judicial committee to look into alleged extrajudicial execution in the region of Deleig and Tenko, owing to the existence of material evidence concerning which the Commission considers it appropriate to conduct a detailed judicial investigation; and bringing to trial of anyone against whom a prima facie charge exists, particularly in view of the existence of accusations addressed to specific individuals;

(b) Institution of a judicial inquiry into the seizure by Arab groups of two villages belonging to the Fur tribe in Kas locality. The Commission has learned that an administrative inquiry is currently being conducted on the matter by a committee formed by the Governor of South Darfur state, owing to the seriousness and implications of the charge, which call for expediting the proceedings;

(c) Establishment of a judicial inquiry into the killing of wounded persons in hospital and the burning of some of them alive in Buram, Meleit and Kulbus, with a view to instituting proceedings against the criminals, especially since witnesses' testimonies contained specific names known to the citizens;

(d) Establishment of a judicial inquiry committee to list citizens' property losses that occurred as a result of the ongoing conflict.

15. The causes of the conflict determined by the Commission in section 5 above call for the adoption of urgent administrative and judicial measures to deal with the consequences of the inadequacies referred to in this report.

16. The roots of the problem investigated in this report and appearing in the summary of the hearings require an in-depth study and the adoption of urgent initiatives and short- and long-term policies to constitute the political basis of the problems of the Darfur states, the most important of which are as follows:

I. The problem of land (*diyar and hawakir*) and the establishment of a sensible policy that takes the following into account:

A. Historical rights and long-established customs that rest on mutual consent between population groups;

B. Changes that have taken place in Darfur, i.e., population growth and disruption of the demographic equilibrium, and their impact on the systems that had governed land tenure and exploitation by agriculturalists and pastoralists;

C. Arrangement of the system of routes in accordance with the changes that have taken place and the estimated increase in number of livestock, and an increase in the agricultural land area and the provision of water sources;

II. The enhancement and further development of the traditional role of native administration so as to remain abreast of the changes that have occurred in Darfur society, in order that such administration may serve as one of the tools for mending the social fabric, thus fully playing its part in economic and social development; the elimination of the negative effects of the culture of violence and the widespread availability of weapons; the firm establishment of the principle of the rule of law; intensive efforts to restore the traditions of peaceful coexistence and community security; and the protection of society against the negative effects of existing contacts with neighbouring countries within the framework of the general policy of the State;

III. Maximum utilization of the resolutions and recommendations of the conferences on solving the problems in Darfur held during the past few decades, through the establishment and implementation of an integrated strategy based on those resolutions and recommendations; amelioration of administrative and executive structures as well as systems and procedures to ensure justice and the rejection of wrongdoing; and action to ensure the participation of all components of Darfur society in the exercise of power;

IV. Darfur society, with its composite population structure, its inherited tribal system, its customs and traditions and the factors of modernization and repercussions of ethnic changes that are overtaking it, requires a civil service with specific characteristics that is capable of comprehending all these aspects and desirous of bringing about the blending of its components, strengthening its social fabric, according priority to development and services and eradicating feelings of having been wronged, both real and perceived. In order for that civil service to be effective, pains must be taken in the careful selection of qualified administrative cadres who are capable of achieving those goals. In this connection attention must be paid to the educational system and to creating opportunities for enrolling school dropouts in occupational and other training in order to turn them into a productive force;

V. The Commission recommends the prompt establishment of the proposed committees for the judicial and administrative investigation of the violations mentioned in this report and the taking of legal steps with regard to anyone against whom prima facie evidence exists;

VI. Inasmuch as the nature of the relations between neighbouring States and the practices that characterized those relations were among the principal causes of this conflict, the Commission recommends revitalizing and amending existing agreements in the light of what has been stated in this report so as to promote good-neighbourly relations and prevent any repetition of what has happened;

VII. Inasmuch as the broad dissemination and possession of and trade in weapons were among the principal causes of the deterioration of the conflict, the Commission recommends the adoption of the necessary measures for collecting those weapons and regulating their possession under the supervision of the authorities;

VIII. Inasmuch as all the Darfur tribes rely on their armed groups to protect them and this leads to lawlessness of some elements and triggers tribal strife, the Commission recommends that this situation should be remedied in various salutary ways on a basis of mutual consent among all tribes. This also requires efforts to enhance the authority and prestige of the State and support for the means of effecting such enhancement so that the State can extend its protection to all citizens; in that way put an end to the consequences of armed groups constantly playing a role that should be played by the authorities; and eliminate, albeit gradually, the phenomena of terror and mobilization that are liable to exploitation by lawless elements.

17. It is necessary to set up urgent programmes to rebuild the regions affected by the events; to establish a development strategy and related plans and programmes that take into account the environmental, cultural and ethnic particularities of Darfur and provide and attract genuine resources to achieve this; and to take into consideration the objective of justice in the allocation of resources to states within the framework of the annual budget of the State.

18. Despite the considerable effort made by the Ministry of Humanitarian Affairs, national volunteer work assumes an important role in such crises. The Commission, having observed the relative lack of national volunteer work, concluded that concern with and support for such work were essential; that the laws and regulations that govern it must be simplified; that financial resources must be allocated to it out of *waqfs* and the Zakat Department; and that consciousness-raising must be undertaken in civil society regarding the important role it plays.

19. The bureaucratic and procedural obstacles with which the introduction of foreign volunteer organizations was fraught and which were subsequently overcome resulted, at the outset, in difficulties of coordination between those organizations and the state authorities. Those organizations carried on their work in a manner which was marked at times by their ignoring the powers and competence of the state authorities. In addition, the fact that they were unfamiliar with conditions in the region, its demographic structure and the relations among the tribes resulted in mistakes that had to be rectified. The Commission therefore considers that the laws and regulations governing the work of such organizations should be updated and measures taken to enable them to perform their tasks and to provide protection for them.

To the President of the Republic:

Sir,

The Commission, on concluding this report, which it submits to you, hopes to have fulfilled its mandate pursuant to the decision whereby it was created and with the 1954 Investigation Committees Act. It hopes that it has performed its duties fairly and impartially and that its investigation of the facts has been characterized by objectivity. While its work represents a human effort that might be marred by some shortcomings, the Commission assures you that it has exerted itself in every possible way. It trusts that the documented facts hereby submitted to you will be of assistance in solving the problem of Darfur so that security and peace may be achieved throughout the country and efforts may be turned to strengthening the social fabric and firmly implanting the principles of national unity and amity among all ethnic groups.

We beseech God to guide our steps and give His blessings to every effort made towards achieving those goals.

Mawlaana Daf' Allah Al-Hajj Yusef (former President of the Judiciary)

Fu'ad Abd Ali (former administrator), Member and Rapporteur of the Commission

Members of the Commission:

Lieutenant-General Hasan Ahmad Sadiq (former Director-General of Police Forces)

Lieutenant-General Al-Sirr Muhammad Ahmad (former Commanding Officer of Western Command)

Fatimah Abd Al-Mahmud (member of the National Assembly)

Hamadtu Mukhtar (Chairman, Human Rights Committee of the National Assembly)

Muhammad Surur Ramli (representative of the native administration)

Nazer Abd Al-Qadir Mun'im Mansur (representative of the native administration)

Omar Al-Faruq Shamina (representative of the Bar Association)